

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-00981-CMA-MEH

HEIDI GILBERT,
AMBER MEANS,
MANDY MELOON,
GABRIELA JOSLIN,
KAY POE, and
and JANE DOES 6-50,
on behalf of themselves and
others similarly situated,
Plaintiffs,

v.

UNITED STATES OLYMPIC COMMITTEE,
USA TAEKWONDO INC.,
U.S. CENTER FOR SAFESPORT
STEVEN LOPEZ,
JEAN LOPEZ,
and JOHN DOES 1-5,
Defendants.

U.S. CENTER FOR SAFESPORT'S MOTION TO DISMISS

The U.S. Center for SafeSport ("Center"), opened in 2017 long after any alleged sexual misconduct against Plaintiffs, moves under Fed. R. Civ. P. 12(b)(1) and (6) to dismiss the second amended complaint. Plaintiffs lack standing to challenge the Center's decisions on others' eligibility; the Center has absolute immunity from this damages lawsuit; and there are no valid legal claims against the Center.

Statement Required by CMA Civ. Prac. Std. 7.1D(A)

The undersigned conferred with Plaintiffs' counsel, detailing in writing why the suit against the Center is frivolous, but Plaintiffs' counsel refused to dismiss the Center.

Background

Plaintiffs sue the Center solely because they disagree with its eligibility rulings, or more precisely, its decision to postpone arbitration—*after* their counsel undercut that arbitration. Allowing this frivolous lawsuit to proceed against the Center would open the floodgates to damages claims challenging discretionary decisions that Congress entrusted exclusively to the Center.

- A. The Safe Sport Authorization Act empowers the Center, which opened in 2017, to investigate and resolve allegations of sexual abuse in amateur athletics.

The Center is congressionally empowered by the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act, Pub. L. No. 126, 115th Cong., 2d Sess., 132 Stat. 318 (Feb. 14, 2018), which amended the Ted Stevens Olympic and Amateur Sports Act, codified as amended at 36 U.S.C. ch. 2205. Congress provided that the Center shall “serve as the independent national safe sport organization and be recognized worldwide as the independent national safe sport organization for the United States.” 36 U.S.C. § 220541(a)(1).

The Safe Sport Authorization Act empowered the Center to exercise jurisdiction over national governing bodies (such as USA Taekwondo) “with regard to safeguarding amateur athletes against abuse, including emotional, physical, and sexual abuse, in sports.” 36 U.S.C. § 220541(a)(2). And it directed that the Center “establish mechanisms that allow for the reporting, investigation, and resolution ... of alleged sexual abuse in violation of the Center’s policies and procedures.” *Id.* § 220541(a)(4). The Center must “provide fair notice and an opportunity to be heard.” *Id.* § 220541(a)(5).

The Act gives the Center broad discretion to resolve eligibility issues. It states: “The Center may, in its discretion, utilize a neutral arbitration body and develop policies and procedures to resolve allegations of sexual abuse within its jurisdiction to determine the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official, who is the subject of such an allegation, to participate in amateur athletic competition.” *Id.* § 220541(c)(1).

The Center has promulgated a SafeSport Code for the U.S. Olympic and Paralympic Movement, Practices and Procedures, and Supplemental Rules for Arbitration. Because the second amended complaint cites to the Center’s “written policies and procedures” (Doc. 68 at 186 ¶ 963(b)), available publicly on the Center’s website (safesport.org), the Code, Practices and Rules are attached hereto as Exhibit 1.

The rules establish procedures whereby the Center investigates and resolves allegations by reporting parties that responding parties violated the SafeSport Code by sexual or other misconduct. After completing an investigation, the Center typically will prepare an investigative report that may include credibility findings. The Center’s director of investigations and outcomes then will determine whether a Code violation was established by a preponderance of the evidence and, if so, what eligibility sanction should be imposed. See Ex. 1 at 20 (Pracs. & Procs. § III(D)(3, 4)).

A responding party found to have violated the SafeSport Code may request a hearing before an arbitration body to challenge all or part of the Center’s decision. *Id.* at 21 (Pracs. & Procs. § III(D)(5)). The rules for arbitration, currently held before JAMS arbitrators, are set forth in Ex. 1 at 25-37 (Supplementary Rules R-1 through R-39).

B. Plaintiffs sue the Center for damages because they disagree with its August 2018 decision postponing arbitration of the Jean Lopez lifetime ban.

The alleged sexual abuse by the Lopez brothers occurred “from 1997 to 2010,” Doc. 68 at 8 ¶ 15—decades and years before the Center opened in March 2017. While the second amended complaint faults the Center for having done “absolutely nothing from 2006 (when Mandy Meloon first reported her sexual abuse) until April 2018,” it concedes on the very next page that the “center, however, was not launched until 2017.” *Id.* at 88-89 ¶¶ 277, 280; *see also id.* at 90 ¶ 282 (“it was not until March 2017 that SafeSport ‘opened’”).

There is no dispute that in 2017 the Center began investigating the Lopezes and that in 2018 it issued separate decisions banning both for life. Indeed, each of the five Plaintiffs recounts her “sense of vindication” and “sense of relief” following the Center’s 2018 decision imposing a lifetime ban on Jean Lopez. *See id.* at 114, 118, 125, 130, 137 ¶¶ 479-80, 518-19, 593-94, 650, 718.

Only after an August 2018 arbitral timing decision in the Jean Lopez matter did the second amended complaint add the Center to the roster of defendants allegedly liable to Plaintiffs for money damages. According to Plaintiffs, the Center in August 2018 “reversed itself and lifted the ban on Jean Lopez.” *Id.* at 114 ¶ 481. Plaintiffs accuse the Center of having “abandoned” the Jean Lopez ban “on appeal” to an arbitration body. *Id.* ¶ 483. They fault the Center for having “reinstated Defendant Jean Lopez, in contravention of its own policies regarding the appeal process, because his victims, Plaintiffs in this action, refused to appear and provide live testimony on his appeal from the ban.” *Id.* at 181 ¶ 945(g).

Plaintiffs allege that the Center's timing decision regarding the Jean Lopez arbitration was grossly negligent and indeed "outrageous." *Id.* at 114 ¶ 484. This decision allegedly caused Plaintiffs to "experience institutional abandonment and strong feelings of emotional distress" as well as unspecified "reputational damages." *Id.* at 114 ¶ 484; *see also id.* at 118, 125, 130, 137, 181 ¶¶ 520, 597, 651, 720-21, 946-47.

The second amended complaint cites several reasons why Plaintiffs disagree with the Center's timing decision regarding the Jean Lopez arbitration. It accuses the Center of: "making the incredible demand, in violation of [its] own written policies and procedures, that the victims of Jean Lopez's abuse, including Plaintiffs, relive the horrors of their abuse by giving live testimony" in the arbitration; "[r]efusing reasonable alternatives to live testimony at the scheduled arbitration, such as sworn declarations;" "[r]efusing the reasonable request to postpone the arbitration pending discovery, including deposition testimony that would take place in this lawsuit; and instead abandoning the decision on appeal, resulting in the unbelievable, inexplicable, and outrageous decision to reinstate Jean Lopez." *Id.* at 186 ¶ 963(b-d).

While principally focusing on the August 2018 arbitral postponement decision involving Jean Lopez, Plaintiffs also fault the Center for purported investigative delay leading to the 2018 bans of the Lopez brothers. *See id.* at 180 ¶ 945(a) (accusing Center of "[f]ailing to promptly investigate and instead unreasonably delaying the investigations of Defendants Jean Lopez and Steven Lopez"). The Center's year-long investigation of multiple allegations dating back decades was, according to Plaintiffs, "in contrast to the '63 days' that most SafeSport investigations last." *Id.* at 166 ¶ 863.

- C. Additional undisputed materials, referenced in but not attached to the complaint, confirm the Center acted reasonably when it postponed the Jean Lopez arbitration.

As discussed below in the Argument section, Plaintiffs' claims against the Center are legally deficient on their own terms. But, for the sake of completeness, the Center cannot leave unrefuted certain gross mischaracterizations of its conduct. Undisputed materials, referenced in but not attached to the complaint, bely the attacks on the Center.¹

Plaintiffs mischaracterize the Center's strategic decision—to *postpone* arbitration until non-hearsay testimony became available—by saying that Jean Lopez's lifetime ban was "abandoned on appeal." Doc. 68 at 114 ¶ 481. There is no dispute that Plaintiffs' counsel refused to allow their clients' arbitral testimony (even by remote video subject only to arbitrators' questioning). Their decision blocked the Center from presenting the strongest possible arbitral case supporting the ban.

After first advising Plaintiffs' counsel of what it would do, see Ex. 3 at 1-2, the Center acted to "stay[] the arbitration of permanent ineligibility until such time" as it could obtain Plaintiffs' testimony. Ex. 2. Plaintiffs' counsel did not previously object, opining that "the middle ground would be to wait a few months for our client's [sic] depositions" in this federal lawsuit. Ex. 3 at 1. While this "wait" required staying the lifetime ban, the Center imposed protective "No Contact" measures during the interim. Ex. 2.

¹ These materials may be considered not only under Fed. R. Civ. P. 12(b)(1) (lack of jurisdiction) but also under Fed. R. Civ. P. 12(b)(6) (failure to state a claim). The former rule allows "a factual attack on subject matter jurisdiction" (*Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995)), such as for lack of Art. III standing. But even under the latter rule, a "district court may consider documents referred to in the complaint if the documents are central to the plaintiff's claim and the parties do not dispute the documents' authenticity." *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 941 (10th Cir. 2002).

Argument

Plaintiffs’ lawsuit against the Center—because they disagree with its 2017-18 handling of complaints and arbitrations involving Jean and Steven Lopez (both of whom the Center banned for life)—is legally unfounded. Still worse, it is dangerous: allowing suits like this would defeat the congressional mandate that the Center have discretion to resolve sexual misconduct allegations in amateur athletics. Plaintiffs complain that the Center is “grossly understaffed and underfunded,” Doc. 68 at 21 ¶ 71, yet hypocritically bring a lawsuit that would deplete the Center’s resources while exposing it to trebled damages enriching private attorneys.

The lawsuit fails, indeed it is frivolous, for multiple legal reasons. Not only do Plaintiffs lack standing to sue the Center (which had nothing to do with injuries allegedly suffered by Plaintiffs long before the Center opened), the Center has absolute immunity from damages, and Plaintiffs have no legally plausible claims against it.

This Court accordingly should dismiss the lawsuit under Rule 12(b)(1) for lack of jurisdiction and under Rule 12(b)(6) for failure to state a claim. There is no Article III jurisdiction because private parties have no standing to complain about a decisionmaking body’s discretionary decisions involving third parties’ eligibility. The Center has absolute immunity from these damages claims, and Plaintiffs fail to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Indeed, while all these legal deficiencies would defeat the damages claims regardless, it bears noting that Plaintiffs’ counsel were the ones who undercut the Center’s ability to enforce the lifetime ban against Jean Lopez.

I. Plaintiffs lack standing to sue the Center based on disagreement over its decisions on others' eligibility.

This suit against the Center contravenes “American jurisprudence.” *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). It is settled that “a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.” *Id.*, quoted and followed in *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 767 n.13 (2005).

Plaintiffs lack standing to sue the Center for how it handles complaints against others. Article III requires that a plaintiff “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

The Supreme Court has “made it clear time and time again that an injury in fact must be both concrete and particularized.” *Spokeo*, 136 S. Ct. at 1548 (emphasis omitted). It is *not* “enough that [one] will be gratified by seeing [others] punished for [their] infractions” or even “derive great comfort and joy from the fact ... that a wrongdoer gets his just desert.” *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 106-07 (1998). Such “psychic satisfaction is not an acceptable Article III remedy because it does not redress a cognizable Article III injury.” *Id.*

The Tenth Circuit thus dismissed, as “frivolous,” a damages suit against a bar association that allegedly mishandled a client’s grievance against his former attorney. *Doyle v. Oklahoma Bar Ass’n*, 998 F.2d 1559, 1566-71 (10th Cir. 1993). Relying by analogy on *Linda R.S.* and its progeny, the Circuit held that a private grievant “has no more standing to insert himself substantively into a license-based discipline system than he has to compel the issuance of a license.” *Id.* at 1567.

Plaintiffs thus lack standing to make the Center legally responsible for not acting as their private counsel wished in sanctioning third parties. The alleged injuries resulting from the Center's proceedings—"feelings" of "institutional abandonment" and "distress" rather than a desired "sense of vindication" and "sense of relief," Doc. 68 at 114, 130 ¶¶ 484, 650—are not the "concrete and particularized" injuries required by Article III. *Spokeo*, 136 S. Ct. at 1548. To the contrary, this type of "psychic satisfaction" is "not an acceptable Article III remedy because it does not redress a cognizable Article III injury." *Steel Co.*, 523 U.S. at 106-07.

II. The Center has absolute immunity from damages lawsuits challenging its eligibility and arbitral decisions.

The Center has absolute immunity from damages suits over eligibility decisions. As the Tenth Circuit explained, "[t]he Supreme Court has long recognized that officials in administrative hearings can claim the absolute immunity that flows to judicial officers if they are acting in a quasi-judicial fashion." *Guttman v. Khalsa*, 446 F.3d 1027, 1033 (10th Cir. 2006) (citing *Butz v. Economou*, 438 U.S. 478, 514 (1978)).

This absolute immunity turns not on an administrative title, or on governmental or non-governmental status, but on *function*. "Absolute judicial immunity is not reserved solely for judges, but extends to nonjudicial officers for 'all claims relating to the exercise of judicial functions.'" *In re Castillo*, 297 F.3d 940, 947 (9th Cir. 2002) (quoting *Burns v. Reed*, 500 U.S. 478, 499 (1991) (Scalia, J., concurring in part and dissenting in part)). The Tenth Circuit thus has extended absolute immunity to those prosecuting and deciding professional license revocation proceedings. See *Gutman*, 446 F.3d at 1033-34 (following *Horwitz v. State Bd. of Med. Examiners*, 822 F.2d 1508 (10th Cir.1987)).

Like every other federal appellate court to consider the issue, the Tenth Circuit has recognized the doctrine of “arbitral immunity.” *Pfannenstiel v. Merrill Lynch, Pierce, Fenner & Smith*, 477 F.3d 1155, 1158-59 (10th Cir. 2007) (citing cases from each of the First through Ninth Circuits). Even though private arbitrators are non-governmental actors, they enjoy absolute immunity when performing quasi-judicial functions. The “key question” for absolute immunity is “whether the claim at issue arises out of a “decisional act.” *Id.* at 1159. If so, “arbitral immunity is essential to protect the decision-maker from undue influence and protect the decision-making process from reprisals by dissatisfied litigants.” *Corey v. N.Y. Stock Exchange*, 691 F.2d 1205, 1211 (6th Cir. 1982). Courts “also agree that to give effect to these underlying policies, arbitral immunity extends beyond arbitrators themselves to organizations that sponsor arbitrations.” *Olson v. Nat’l Ass’n of Securities Dealers*, 85 F.3d 381, 382 (8th Cir. 1996).

Here, in violation of these immunity cases, Plaintiffs are suing the Center because they disagree with its decisions—in particular, with its decision on when and how to conduct arbitration over Jean Lopez’s lifetime ban. But those decisions are entrusted by federal law exclusively to the Center. It was *the Center* that Congress empowered to “establish mechanisms ... for the ... resolution ... of alleged sexual abuse in violation of the Center’s policies and procedures.” 36 U.S.C. § 220541(a)(4). And it was *the Center* that Congress vested with the “discretion” to “utilize a neutral arbitration body ... to resolve allegations of sexual abuse within its jurisdiction to determine” eligibility. *Id.* § 220541(c)(1).

The Center, as the decisionmaker empowered by Congress with discretion to decide eligibility disputes, has an even stronger ground for absolute immunity than arbitrators empowered by private parties. Allowing damages lawsuits against the Center by disgruntled participants would defeat federal policy.

Congress specifically refused to “create a private right of action under this chapter,” 36 U.S.C. § 220505(b)(9): *i.e.*, under 36 U.S.C. Chap. 2205, of which the Safe Sport Authorization Act is now a part. It is well settled that “the Amateur Sports Act creates no private right of action” and that state law challenges to “questions of athletes’ eligibility are preempted.” *Slaney v. Int’l Amateur Ath. Fed.*, 244 F.3d 580, 594-96 (7th Cir. 2001). “Allowing coaches or athletes to litigate eligibility in court” would “conflict with a principal purpose of the Sports Act: establishing uniform eligibility standards and a comprehensive mechanism for the prompt resolution of disputes outside the judicial process.” *Pliuskaitas v. USA Swimming, Inc.*, 243 F. Supp. 3d 1217, 1227 (D. Ut. 2017), *aff’d on other grounds*, 720 F. App’x 481 (10th Cir. 2018).

This damages lawsuit against the Center over its eligibility and arbitral decisions defeats the discretion the Safe Sport Authorization Act grants to the Center. Absolute immunity thus is necessary to protect the Center’s “independent judgment, free from the threat of lawsuits.” *Corey*, 691 F.2d at 1211. Indeed, absolute immunity is “*essential*” to protecting the Center’s “decision-making process from reprisals by dissatisfied litigants.” *Pfannenstiel*, 477 F.3d at 1158 (emphasis added to Tenth Circuit opinion, quoting *New England Cleaning Servs., Inc. v. American Arbitration Ass’n*, 199 F.3d 542, 545 (1st Cir.1999)).

III. Plaintiffs fail to state any legally plausible claim against the Center.

A. It is frivolous to accuse the Center of federal sex trafficking crimes.

Plaintiffs allege that the Center, in making eligibility decisions (including imposing lifetime bans), committed federal sex trafficking and forced labor crimes. They therefore invoke against the Center the civil remedies provisions of the Trafficking Victims Protection Act (TVPA), 18 U.S.C. § 1595, and of 18 U.S.C. § 2255.

The Center committed no federal crimes against Plaintiffs or anyone else. Instead, all of the alleged criminal conduct occurred years and decades before the Center even existed.

Plaintiffs strain to hold the Center secondarily liable after the fact for the Lopezes' prior misconduct. But better-reasoned cases hold that "the civil remedy provision of [18 U.S.C. § 2255] does not permit claims for secondary or vicarious liability." *Doe v. Hansen*, No. 4:16–CV–546 JAR, 2018 WL 2223679 (E.D. Mo. May 15, 2018) (following *Jean-Charles v. Perlitz*, 937 F.Supp.2d 276 (D. Conn. 2013), which relied on *Central Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164, 191 (1994)).

The TVPA, in turn, expressly limits civil remedies to cases brought "against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter)." 18 U.S.C. § 1595. The Center was neither the "perpetrator" of the alleged federal crimes (all committed long before it ever existed) nor did it benefit financially in any way from those alleged crimes.

Even if some theory of secondary liable could make a defendant civilly liable for long-ago crimes predating its existence, Plaintiffs cannot plausibly plead the Center had any criminal intent. Courts reject claims where there was no evidence “remotely suggesting” defendants shared an abuser’s specific intent to commit sexual offenses or actively participated to assist the abuser’s criminal conduct. *Doe v. Liberatore*, 478 F. Supp. 2d 742, 756-57 (M.D. Pa. 2007).

Far from assisting the Lopezes in any misconduct, or from obstructing any federal investigation, the Center imposed lifetime bans on the Lopezes. While Plaintiffs lob specious attacks on pre-arbitral timing decisions, they cannot plausibly allege that the Center acted with specific intent to facilitate federal crimes.

B. There are no valid RICO claims against the Center.

There are no valid claims that the Center engaged in criminally prohibited activities under the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1962. The Center never even remotely participated in a RICO enterprise through a pattern of racketeering activity. The RICO claims fail because the Center had zero involvement in the sex trafficking or forced labor alleged as the RICO predicate crimes.

Plaintiffs’ RICO claims must also be dismissed because the civil RICO statute is limited to a “person injured in his *business or property* by reason of” a pattern of criminal racketeering. 18 U.S.C. § 1964(c) (emphasis added). The Supreme Court has construed this statutory “reference to injury to ‘business or property’” as “cabining RICO’s private cause of action to particular kinds of injury—excluding, for example, personal injuries.” *RJR Nabisco, Inc. v. European Community*, 136 S. Ct. 2090, 2108 (2016).

Unable to allege that the Center injured their “business or property,” Plaintiffs instead claim the Center’s decisions caused them to “experience institutional abandonment and strong feelings of emotional distress.” Doc. 68 at 114 ¶ 484. But “a plaintiff cannot recover for emotional, [or] personal ... injuries under § 1964(c).” *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865, 888-89 (10th Cir. 2017).

Plaintiffs also cannot satisfy RICO’s “demand for some direct relation between the injury asserted and the injurious conduct alleged.” *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268 (1992). Plaintiffs’ alleged physical injuries (abuse by the Lopezes), which occurred long before the Center existed, were not suffered “by reason of” any conduct by the Center. 18 U.S.C. § 1964(c). The alleged “link” between Plaintiffs’ injuries and the Center’s conduct thus is “too remote”—indeed, it is nonexistent—to satisfy RICO’s “proximate-cause requirement.” *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457 (2006) (some internal quotations omitted).

C. There are no valid state tort claims against the Center.

1. The negligence claims fail for lack of a tort duty and because the Center did not cause Plaintiffs’ injuries.

The state-law claims for negligence require “establish[ing] that (1) the defendant owed the plaintiff a legal duty of care; (2) the defendant breached that duty; (3) the plaintiff was injured; and (4) the defendant’s breach caused that injury.” *N.M. by and through Lopez v. Trujillo*, 397 P.3d 370, 374 (Colo. 2017). The existence of a duty “presents a question of law to be determined by the court.” *Id.* Relevant factors include “the social utility of the actor’s conduct” and “the consequences of placing the burden on the actor.” *Keller v. Koca*, 111 P.3d 445, 448 (Colo. 2005).

The Center's legal duties cannot run to any particular party, as in each case the Center must adjudicate *conflicting* interests. The Center thus must exercise independent *discretion*, so it fairly treats reporting parties alleging misconduct as well as responding parties denying misconduct.

Imposing legal duties enforceable under tort law would undermine the Safe Sport Act by impairing the discretion needed to adjudicate conflicting claims. Courts are most likely to find "no-duty" where the challenged action involves "a discretionary determination of the sort insulated from review." Restatement (Third) of Torts: Phys. & Emot. Harm § 7, cmt. g (2010) (explaining "Deference to discretionary decisions of another branch of government") (italics omitted). And the Colorado Supreme Court has hesitated to impose tort law duties where doing so "could result in adversarial relationships" due to "conflicting duties and loyalties." *Baker v. Wood, Ris & Hames, P.C.*, 364 P.3d 872 (Colo. 2016) (explaining why attorneys owe no duties to will beneficiaries). The Center accordingly owes no legal duty of care, *enforceable in a tort law suit for damages*, to individuals (whether reporting or responding parties) whose claims and defenses it is adjudicating.

The tort law claims against the Center fail for the additional reason that the Center's decisions were not a proximate cause of any abuse suffered by Plaintiffs. Proximate cause requires that the defendant's negligence be both the "actual" and "legal" cause of the injuries. See *Boulders at Escalante LLC v. Otten Johnson, P.C.*, 412 P.3d 751, 759 (Colo. App. 2015). Here, nothing the Center did or did not do in 2017 or 2018, long after the 1997-2000 abuse allegedly suffered by Plaintiffs, could have caused (or prevented) that alleged abuse.

2. The Center's eligibility decisions were not "outrageous" misconduct.

Plaintiffs' challenges to the Center's eligibility and arbitral decisions do not come close to meeting the "extremely high" bar "of outrageousness required to constitute extreme and outrageous conduct." *Coors Brewing Co. v. Floyd*, 978 P.2d 663, 666 (Colo.1999). Under that high standard, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* (quoting Restatement (Second) of Torts § 46 (1965)). *Coors* held as a matter of law that the requisite high level of outrageousness was not met even though the defendant's executives allegedly engaged in an extensive criminal conspiracy and fired the plaintiff to cover up misconduct by making him appear solely responsible for it. *Id.* And where as here, a defendant "was within its rights to" take the challenged action, the conduct is "not extreme and outrageous." *Mackall v. JPMorgan Chase Bank, N.A.*, 356 P.3d 946, 955-56 (Colo. App. 2014).

3. The Center acted reasonably by imposing lifetime bans of the Lopezes and postponing the Jean Lopez arbitration.

The Center accordingly need not demonstrate that it acted reasonably in deciding whether, when and how to impose and defend the lifetime bans on the Lopezes. As set forth above, such eligibility decisions are not subject to judicial review—either directly under the Amateur Sports and Safe Sport Authorization Acts, or collaterally in a damages lawsuit brought by disgruntled parties. Indeed, allowing such decisions to be challenged collaterally in *damages* lawsuits would undermine the Center's independence even more so than would direct judicial review.

The Center's decisions regarding the Lopezes were manifestly reasonable in any event. Plaintiffs themselves acknowledge their satisfaction with the lifetime bans imposed in 2018; where they part company with the Center involves the manner and timing of arbitrating Jean Lopez's lifetime ban. See Doc. 68 at 114, 118, 125, 130, 137 ¶¶ 479-80, 518-19, 593-94, 650, 718.

The predicament in defending the Jean Lopez ban in arbitration was caused entirely by Plaintiffs' counsel in refusing to provide anything other than "declarations" in the arbitration. Ex. 3 at 1. Plaintiffs' counsel refused the Center's request for any form of "testimony (whether in person, video, phone or through questioning by the arbitrators)." *Id.* at 1-2.

Once Plaintiffs' counsel kneecapped the Center by blocking their clients' arbitral testimony, the Center had to decide whether to proceed immediately to arbitration based solely on hearsay or instead to postpone the arbitration. Under the Center's rules, even the most compelling hearsay affidavit may only be "give[n] such weight as the arbitrator deems appropriate after considering any objection made to its admission." Ex. 1 at 31 (R-26). Counsels' decision left the Center without its strongest possible case, with no second chance to enforce the lifetime ban if arbitrators discounted the hearsay and found the abuse charges against Jean Lopez were not proven by a preponderance of the evidence. The Center therefore acted reasonably in deciding to postpone the arbitration until non-hearsay testimony became available, which Plaintiffs' counsel predicted would be within "a few months." Ex. 3 at 1.

Again, to be clear, the Center's decision following the kneecapping by Plaintiffs' counsel was simply a matter of timing: the Center decided to "stay" Jean Lopez's arbitration, until it could present its strongest non-hearsay case. Ex. 2. By no means was that lifetime ban, as mischaracterized in the second amended complaint, "abandoned on appeal." Doc. 68 at 114 ¶ 481. This postponement decision was the best of the bad alternatives left to the Center once Plaintiffs' counsel blocked the Center from presenting its strongest possible case against Jean Lopez.

Plaintiffs' counsel (having created the predicament) cannot second-guess the Center's arbitral timing decision, much less seek damages against the Center for its discretionary decisionmaking. In any event, the Center reasonably exercised its discretion in determining how and when to effectuate a lifetime ban.

Conclusion

The Court should dismiss the second amended complaint against the Center.

Respectfully submitted,

s/ Sean Connelly
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CERTIFICATE OF SERVICE

I hereby certify that this Motion was filed and served on this 24th day of September 2018, using the CM/ECF system, which will serve as notification of such filings on counsel for all parties.

s/ Sean Connelly
Sean Connelly



SAFESPORT CODE FOR THE U.S. OLYMPIC AND PARALYMPIC MOVEMENT

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SAFESPORT CODE FOR THE U.S. OLYMPIC AND PARALYMPIC MOVEMENT

Effective March 21, 2018

The U.S. Olympic and Paralympic Movement is committed to creating and maintaining a sport community where all persons who participate in sport programs and activities can work and learn together in an atmosphere free of all forms of emotional, physical and sexual misconduct. The U.S. Center for SafeSport's Response and Resolution Office (Office) has issued this *SafeSport Code for the U.S. Olympic and Paralympic Movement (Code)* and its appendices (collectively, *Code*) pursuant to the Center's authority under the United States Olympic Committee's (USOC) Bylaws.

Individuals within the Office's jurisdiction are responsible for knowing the information, policies and procedures outlined in this *Code* and its related policies. The Office reserves the right to make changes to this document as necessary. Once posted online, changes are effective immediately unless otherwise noted.

I. INTRODUCTION

A. Application

The *Code* applies to Covered Individuals, as defined below.

B. Online, email, cellular or other electronic media or digital conduct

The *Code* may be applied to behavior conducted online or distributed electronically using email, text messages or any other electronic medium. This includes without limitation blogs, web postings, chats and social networking sites.

C. Age and competitive level irrelevant

Except as specifically noted, the *Code* applies without respect to age or competitive level.

D. Other remedies

1. The *Code* does not replace:

- a. the Ted Stevens Olympic and Amateur Sports Act;
- b. the employment practices of any relevant organization; or
- c. applicable federal or state law.

2. The *Code* does not extend or restrict a person's right to file charges or claims with any other agency, law enforcement or court. Individuals are encouraged to ensure their rights have not expired through these other avenues.

II. DEFINITIONS

The following terms, as used in the *Code* and Appendices A and B, shall have the following meaning:

A. Athlete

An individual recognized as an athlete by an NGB under its bylaws, rules, regulations, guidelines or other governing documents.

B. Bullying Behavior

Repeated and/or severe (a) aggressive behavior (b) among Minors,¹ (c) that is intended or likely to hurt, control or diminish another person emotionally, physically or sexually.

¹ Bullying-like behaviors among adults are addressed under other forms of misconduct such as Hazing and Harassment.

1. Forms

a. Physical

Hitting, pushing, punching, beating, biting, striking, kicking, choking, spitting or slapping; throwing objects such as sporting equipment at another person.

b. Verbal

Teasing, ridiculing, taunting, name-calling or intimidating or threatening to cause someone harm.

c. Social, including cyberbullying

Using rumors or false statements about someone to diminish that person's reputation; using electronic communications, social media or other technology to harass, frighten, intimidate or humiliate someone; socially excluding someone and asking others to do the same.

d. Sexual

Teasing, ridiculing or taunting based on gender or sexual orientation (real or implied), gender traits or behavior (e.g., taunting someone for being too effeminate), or teasing someone about their looks or behavior as it relates to sexual attractiveness.

2. Rude, mean and conflict—distinguished

Conduct may not rise to the level of Bullying Behavior if it is rude (inadvertently saying or doing something hurtful), mean (purposefully saying or doing something hurtful, but not as part of a pattern of behavior), or arising from conflict or struggle between persons, absent a Power Imbalance, who perceive they have incompatible goals.

3. Criminal conduct

Bullying Behavior includes any conduct described as bullying under federal or state law.

C. Consent

Freely given agreement by all people involved. As it relates to Sexual Conduct, Consent requires words or actions by a person who is legally and functionally competent to give informed permission for specific sexual activity. Consent to any one form of sexual activity does not automatically imply Consent for any other forms of sexual activity. Previous relationships or prior consent does not imply consent to future sexual activity. Once given, Consent can be withdrawn through clear communication.

Consent does not exist if a person does not give Consent, or an Inability to Consent or Inability to Refuse exists.

1. Inability to Consent

An Inability to Consent exists when Consent cannot be given because the person (a) lacks legal capacity or (b) is Incapacitated.

a. Incapacitated

A state where a person cannot make a rational, reasonable decision because they lack the capacity to give informed consent (i.e., to understand the “who, what, when, where, why or how” of the sexual interaction).

A person may be Incapacitated because of a developmental or mental disability, illness, injury, alcohol or other drug use (voluntary or involuntary), blackout, sleep, unconsciousness or involuntary physical restraint.

2. Inability to Refuse

An Inability to Refuse exists when effective Consent cannot be given because of the use of Coercion, Force, Intimidation, or creating or misusing a Power Imbalance.

a. Coercion

Unreasonable pressure to engage in Sexual Conduct. Whether pressure is unreasonable depends on four factors, considered together: (a) frequency, (b) intensity, (c) isolation and (d) duration.

b. Force

The use or threat of physical force that overcomes free will or resistance.

c. Intimidation

Implied threats or acts that reasonably cause a fear of harm in another.

D. Covered Adult

A Covered Individual who is 18 years of age or older.

E. Covered Individual

Any individual who: (a) currently is, or was at the time of a possible violation of the *Code*, within the governance or disciplinary jurisdiction of an NGB or who is seeking to be within the governance or disciplinary jurisdiction of an NGB (e.g., through application for membership), (b) is an Athlete or Non-athlete Participant that an NGB or the USOC formally authorizes, approves or appoints to a position of authority over Athletes or to have frequent contact with Athletes or (c) an NGB identifies as being within the Office's jurisdiction.

F. Covered Minor

A Covered Individual who is under the age of 18.

G. Criminal Disposition

Any disposition of a criminal proceeding, other than an adjudication of not guilty, including an adjudication of guilt or admission to a criminal violation; a plea to a lesser included offense; a plea of no contest; the disposition of the proceeding through a diversionary program, deferred adjudication, disposition of supervision, conditional dismissal, or similar arrangement; or the existence of a warrant for arrest or any pending charges.

H. Emotional Misconduct

Repeated and/or severe non-contact behavior involving (a) Verbal Acts, (b) Physical Acts and/or (c) Acts that Deny Attention or Support. Emotional Misconduct is determined by the objective behaviors, not whether harm is intended or results from the behavior.

1. Verbal Acts

Verbal assault that repeatedly attacks someone personally (e.g., calling a person worthless, fat or disgusting; taunting a person for being too effeminate); repeatedly and excessively yelling at a particular athlete or other participant in a manner that serves no productive training or motivational purpose.

2. Physical Acts

Physically aggressive behaviors, such as throwing sport equipment, water bottles or chairs at or in the presence of others; punching walls, windows or other objects.

3. Acts that Deny Attention or Support

Ignoring or isolating a person for extended periods of time, including routinely or arbitrarily excluding a participant from practice.

4. Exclusions

Emotional Misconduct does not include professionally accepted and age-appropriate coaching methods for skill and performance enhancement, physical conditioning, team building or appropriate discipline.

5. Criminal conduct

Emotional Misconduct includes any act or conduct (e.g., psychological abuse, emotional abuse, mental abuse, child abuse) that can be described as emotional abuse under applicable federal or state law.

I. Harassment

Repeated and/or severe conduct that (a) causes fear, humiliation or annoyance, (b) offends or degrades, (c) creates a hostile environment, or (d) reflects discriminatory bias in an attempt to establish dominance, superiority or power over an individual athlete or group based on age, gender, sexual orientation, gender expression, gender identity, race, ethnicity, culture, religion, national origin, or mental or physical disability; or (e) any act or conduct described as harassment under federal or state law. Whether conduct is harassing depends on the totality of the circumstances, including the nature, frequency, intensity, location, context and duration of the behavior.

1. Forms

Harassment, which may be a form of Emotional, Physical or Sexual Misconduct, includes but is not limited to:

a. Discriminatory Harassment

Conduct with the design or effect of establishing dominance, superiority or power over an individual or group based on age, sex, race, color, ethnicity, culture, national origin, religion, sexual orientation, gender expression, gender identity, or mental or physical disability.

b. Stalking

Conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or to suffer substantial emotional distress. Stalking generally involves a course of conduct which includes two or more acts, involving persistent and frequent unwanted in-person contact, surveillance or unwanted telephone and/or other electronic contact.

i. Examples

Stalking behaviors include without limitation: following a person; appearing at a person's home, class, work or practice; frequent phone calls, emails, or text messages; continuing to contact a person after receiving requests to stop; leaving unwanted written messages, objects or gifts; vandalizing a person's property; threatening, intimidating or intrusive behavior; and violating a lawful order preventing contact with a person.

c. Sexual Harassment

Conduct by a Covered Adult toward an Athlete or other non-employee, Non-athlete Participant that includes (a) sexual advances, requests for sexual favors, or other verbal or physical behaviors of a sexual nature; or (b) is sufficiently severe, persistent or pervasive and objectively offensive that it negatively affects an individual's performance.

J. Hazing

Any conduct that subjects another person, whether physically, mentally, emotionally or psychologically, to anything that may endanger, abuse, humiliate, degrade or intimidate the person as a condition of joining or being socially accepted by a group, team or organization. Purported Consent by the person subject to Hazing is not a defense, regardless of the person's perceived willingness to cooperate or participate.

1. Examples

Examples of Hazing include:

a. Contact acts

Tying, taping or otherwise physically restraining another person; beating, paddling or other forms of physical assault.

b. Non-contact acts

Requiring or forcing the consumption of alcohol, illegal drugs or other substances in an effort to elicit a negative physiological response, including participation in binge drinking and drinking games; personal servitude; requiring social actions (e.g., wearing inappropriate or provocative clothing) or public displays (e.g., public nudity) that are illegal or meant to draw ridicule; excessive training requirements demanded of only particular individuals on a team that serve no reasonable or productive training purpose; sleep deprivation; otherwise unnecessary schedule disruptions; withholding of water and/or food; restrictions on personal hygiene.

c. Sexualized acts

Actual or simulated Sexual Conduct of any nature.

2. Criminal acts

Any act or conduct that constitutes hazing under applicable federal or state law.

K. Intimate Relationship

A close personal relationship that exists independently and outside of the sport relationship. Whether a relationship is intimate is based on the totality of the circumstances, including: regular contact and/or interactions outside of or unrelated to the sport relationship (electronically or in person), the parties' emotional connectedness, the exchange of gifts, ongoing physical contact and/or Sexual Conduct, identity as a couple, the sharing of sensitive personal information, and/or knowledge about each other's lives outside the sport relationship.

L. Local Affiliated Organization (LAO)

A regional, state or local club or organization that is directly affiliated with an NGB, such as a regional affiliate or a local club, or that is affiliated with an NGB by virtue of its direct affiliation with a regional affiliate or organization.

M. Minor

An individual under the age of eighteen.

N. National Governing Body (NGB)

A U.S. Olympic National Governing Body, Pan American Sport Organization, or Paralympic Sport Organization recognized by the United States Olympic Committee pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §§ 220501-220529. When the USOC manages and governs a Paralympic sport, the USOC falls within this definition.

O. Non-athlete Participant

Any coach, trainer, team staff, medical or paramedical personnel, administrator, official, or other athlete support personnel, employee or volunteer who participates.

P. Physical Misconduct

Any contact or non-contact conduct that causes or reasonably threatens to cause physical harm to another person.

1. Examples

Examples of physical misconduct may include, without limitation:

a. Contact violations

Punching, beating, biting, striking, choking or slapping another; intentionally hitting another with objects, such as sporting equipment; encouraging or knowingly permitting an Athlete to return to play prematurely following a serious injury (e.g., a concussion) and without the clearance of a medical professional.

b. Non-contact violations

Isolating a person in a confined space, such as locking an Athlete in a small space; forcing an Athlete to assume a painful stance or position for no athletic purpose (e.g., requiring an athlete to kneel on a harmful surface); withholding, recommending against, or denying adequate hydration, nutrition, medical attention or sleep; providing alcohol to a person under the U.S. legal drinking age; providing illegal drugs or non-prescribed medications to another.

2. Criminal conduct

Physical misconduct includes any act or conduct described as physical abuse or misconduct under federal or state law (e.g. child abuse, child neglect, assault).

3. Exclusion

Physical misconduct does not include professionally accepted coaching methods of skill enhancement, physical conditioning, team building, appropriate discipline or improved athlete performance. For example, hitting, punching and kicking are well-regulated forms of contact in combat sports but have no place in swimming.

Q. Position of Power

When one person has direct supervisory, evaluative or other authority over another.

1. Examples

A person who may be in a Position of Power includes someone such as a coach, boss, employer or medical personnel.

R. Power Imbalance

A Power Imbalance may exist:

- 1.** Where one person is in a Position of Power such that, based on the totality of the circumstances, there is a Power Imbalance.
 - a.** Whether someone occupies a Position of Power such that there is a Power Imbalance depends on several factors, including: the nature and extent of the supervisory, evaluative or other authority over the person; the actual relationship between the parties; the parties' respective roles; the nature and duration of the relationship; the age of the adult; the age of the people involved.

- b. Once a coach-Athlete relationship is established, a Power Imbalance is presumed to exist throughout the coach-Athlete relationship (regardless of age) and is presumed to continue for Minor Athletes after the coach-Athlete relationship terminates and the Athlete reaches 20 years of age. A Power Imbalance may exist, but is not presumed, where an Intimate Relationship existed before the sport relationship (e.g., a relationship between two spouses or life partners that preceded the sport relationship).

- 2. Based on the totality of the circumstances, including whether there is an aggressor, and/or a significant disparity in age, size, strength or mental capacity.

S. Reporting Party

In proceedings under the *SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement*, the person alleging a violation of the *Code*.

T. Responding Party

In proceedings under the *SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement*, the person who is alleged to have violated the *Code*.

U. SafeSport Code Violation (Violation)

Conduct by a Covered Individual that violates (a) this *SafeSport Code for the U.S. Olympic and Paralympic Movement*; (b) any previous LAO, NGB or USOC standards concerning the type of conduct prohibited in this *Code*; or (c) other standards accepted at the time of conduct analogous to prohibited conduct in this *Code*.

V. Sexual Conduct

Contact and non-contact behaviors of a sexual nature.

1. Contact behaviors of a sexual nature

Any intentional bodily contact of a sexual nature, however slight, whether clothed or unclothed, of a person's intimate body parts with any object or body part up to and including a completed or attempted penetration.

a. Sexual Contact

Sexual contact is (a) any intentional bodily contact, however slight, whether clothed or unclothed, of a person's intimate body parts (primarily genital area, groin, inner thigh, buttock or breast) with any object or body part and/or (b) any other intentional bodily contact in a sexual manner.

b. Sexual Intercourse

Sexual intercourse is (a) a completed or attempted penetration of the vulva or anus by a penis, object, tongue or finger; and/or (b) contact between the mouth and the penis, vulva or anus.

2. Non-contact behaviors of a sexual nature

Non-contact behaviors of a sexual nature include (a) exposure to sexual situations (e.g., pornography, voyeurism, exhibitionism); (b) sexual comments, sexually explicit photographs; or (c) filming, taking or disseminating photographs of a sexual nature.

a. Exploitation

Non-contact behavior of a sexual nature includes Exploitation (taking sexual advantage of another to benefit or gratify one's self or any person other than the person or persons being exploited). Exploitation includes, but is not limited to (a) voyeurism or spying on persons engaged in intimate or sexual behavior, (b) exposing genitals or inducing another person to expose his or her genitals without Consent, (c) taking

pictures or video or audio recordings of another in a sexual act or in any other private activity, without the Consent of all involved in the activity, or (d) disseminating or threatening to disseminate pictures, video recordings or audio recordings of another person in a sexual act or any other private activity.

W. Third-party Reporter

A person who reports or discloses a possible violation of the *Code*, if not the Reporting Party.

X. Third-party Reports

Reports or disclosures of a possible violation of the *Code* brought by a person other than a Reporting Party.

III. PROHIBITED CONDUCT

A. Sexual misconduct

1. Generally

Sexual misconduct offenses include:

- a. Sexual Conduct (or attempts to commit the same), without Consent.
- b. Sexual Conduct (or attempts to commit the same), where there is a Power Imbalance, regardless of purported Consent.
- c. Sexual Harassment.
- d. An Intimate Relationship involving a person in a Position of Power where a Power Imbalance exists.

2. Sexual misconduct involving Minors

Regardless of any purported Consent, a sexual misconduct offense involving a Minor includes:

- a. Sexual Conduct (or attempt to commit the same) between a Covered Adult and a Minor where the age difference is three or more years.
- b. Sexual Conduct (or attempt to commit the same) between a Covered Adult and a Minor where the age difference is less than three years, but a Power Imbalance exists.
- c. An Intimate Relationship (or attempt to establish the same) between a Covered Adult and a Minor where the age difference is three or more years and a Power Imbalance exists.
- d. Sexual Conduct between a Covered Minor and another Minor if: (1) the age difference is three or more years, or (2) there is a Power Imbalance based on the totality of the circumstances.

3. Child sexual abuse

A Covered Individual shall not engage in any behavior that constitutes child sexual abuse as defined by federal or applicable state law.

4. Criminal Disposition

It is a violation of the *Code* for a Covered Individual to be convicted of or subject to a Criminal Disposition.

5. Other

A Covered Individual shall not engage in any other form of sexual misconduct, including Bullying Behaviors or Hazing of a sexual nature.

B. Other misconduct

1. Emotional or Physical Misconduct

A Covered Individual shall not engage in Emotional or Physical Misconduct. Emotional or Physical Misconduct may include Bullying Behaviors, Hazing or Harassment.

2. Proactive policies

An LAO, NGB or the USOC may adopt proactive policies that apply to Covered Individuals and set standards for professional boundaries, minimize the appearance of impropriety and have the effect of preventing boundary violations and prohibiting grooming tactics.² Tailored to a specific sport, context, legal structure or constituency, such policies may address overnight travel rules (e.g., preventing unrelated Covered Adults and Minors from sharing rooms under specified circumstances), massages and rubdowns, social media and electronic communications, photography, locker rooms, one-on-one meetings and gifting. If a Covered Individual violates a proactive policy established by the Covered Individual's LAO, NGB or the USOC, it shall also be a violation of the *Code*.

C. Retaliation

Retaliation is any adverse action taken by a Covered Individual against a person participating in the Office's proceedings. Retaliation by a Covered Individual against a person for making an allegation, supporting a Reporting Party

or providing information relevant to an allegation is a serious violation of the *Code*.³

IV. ENFORCEMENT AUTHORITY

A. Exclusive authority—sexual misconduct

The Office has the exclusive authority to investigate and resolve conduct involving (a) sexual misconduct; and (b) prohibited conduct under the *Code* that is reasonably related to the underlying allegation of sexual misconduct. Exclusive authority means (a) only the Office will investigate and manage any related arbitration involving sexual misconduct; and (b) neither the NGB nor the USOC will conduct its own investigation or arbitration with respect to possible sexual misconduct, except as otherwise provided. *See* Appendices A and B.

B. Discretionary authority

On the written request of the NGB or USOC, the Office may, in its discretion, accept authority over alleged violations of any prohibited conduct under the *Code*.

V. REPORTING

A. Sexual misconduct

1. Conduct by a Covered Individual that could constitute sexual misconduct should be reported to the Office as set forth in the *SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement* (Appendix A).

² "Grooming" describes the process whereby a person engages in a series or pattern of behaviors with a goal of engaging in sexual misconduct. Grooming is initiated when a person seeks out a vulnerable minor. Once selected, offenders will then earn the minor's trust, and potentially the trust of the minor's family. After the offender has engaged the minor in sexually inappropriate behavior, the offender seeks to maintain control over him/her. Grooming occurs through direct, in-person and/or online contact.

³ Because the Office's authority is limited to direct or indirect actions by a Covered Individual, the power to address retaliatory discrimination or harassment is likewise limited. The Office does not have any control or authority over the conduct of others outside its jurisdiction and does not have any control or authority over the employment status of Covered Individuals.

2. **If an allegation involves child abuse or neglect, the matter should also be referred to the appropriate legal authorities.**

B. Other misconduct

1. Emotional and Physical Misconduct

Conduct by a Covered Individual that could constitute Emotional or Physical Misconduct under the *Code*, including Bullying Behaviors, Hazing and Harassment, should be reported to the relevant, promulgating organization.

2. Proactive policies

Conduct by a Covered Individual that could violate a proactive policy should be reported to the relevant, promulgating organization. If the relevant, promulgating organization is an LAO, the LAO should also report a possible violation of a proactive policy to its NGB. The NGB, in turn, should report the matter to the Office.

C. Retaliation

1. Sexual misconduct

Retaliation related to an allegation of sexual misconduct should be reported to the Office.

2. Other misconduct

Retaliation related to an allegation of other misconduct—Emotional Misconduct, Physical Misconduct, Bullying Behaviors, Hazing, Harassment or proactive policies—should be reported to the relevant, promulgating organization.

D. Willful Toleration

In addition to failing to report misconduct as discussed above, it is also considered a violation of the Code to willfully tolerate misconduct of any kind.



SAFESPORT PRACTICES AND PROCEDURES FOR THE U.S. OLYMPIC AND PARALYMPIC MOVEMENT

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**SAFESPORT PRACTICES AND PROCEDURES FOR THE
U.S. OLYMPIC AND PARALYMPIC MOVEMENT**

Effective as of March 21, 2018

I. APPLICATION AND STANDARDS

A. Application

The U.S. Center for SafeSport Response and Resolution Office (Office) uses the *SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement (Procedures)* to determine whether a Covered Individual violated the *SafeSport Code for the U.S. Olympic and Paralympic Movement (Code)*.

B. Authority

1. Exclusive authority

The Office, or its duly appointed designee, has exclusive authority over (a) actual or suspected sexual misconduct by a Covered Individual; and (b) misconduct that is reasonably related to an underlying allegation of sexual misconduct, as set forth in the *Code*. Exclusive authority means that (a) only the Office will investigate and manage any related hearings involving sexual misconduct and (b) neither the NGB nor USOC will conduct its own investigation or arbitration with respect to possible sexual misconduct, except as otherwise provided.

a. No statute of limitations or Time Bar of Any Sort

The Office is assessing a Covered Individuals current fitness to participate in sport. Accordingly, no criminal, civil, or rules-based statutes of limitations or time bars of any kind prevent the Center from investigating, assessing and considering relevant conduct in its process.

b. Limit—individuals and non-employment matters

- i. The Office's authority extends only to the conduct of *individuals*—Covered Individuals specifically. It does not regulate, investigate or audit LAO, NGB or USOC organizational practices.
- ii. The Office's exercise of any authority under its resolution proceedings are independent of any employment decisions made by an LAO, NGB or the USOC, which have sole responsibility for any employment action.

2. Discretionary authority

On the written request of an NGB or the USOC, the Office may, in its discretion, accept jurisdiction over any form of misconduct as set forth in the *Code*.

C. Substantive Standards

In resolving allegations of misconduct, the Office applies its currently effective procedures and the substantive standards in effect at the time of the alleged violation. If a report is made regarding conduct that occurred before the effective date of the *Code*, the Office will apply the relevant NGB's substantive rules and regulations and/or other standards applicable at the time of the alleged conduct.

D. Standard of proof

The Office uses the preponderance of the evidence standard to determine whether a Covered Individual violated the *Code*.

II. REPORTING, CONFIDENTIALITY AND PRIVACY

A. Reporting

1. Anyone may report

Anyone who becomes aware of possible sexual misconduct under the *Code* by a Covered Individual may report to the Office and is encouraged to do so.

2. Mandatory reporters

a. Covered Adults

i. Sexual misconduct

Covered Adults *must* report to the Office (conduct of which they become aware that could constitute (a) sexual misconduct, (b) misconduct that is reasonably related to the underlying allegation of sexual misconduct and (c) retaliation related to an allegation of sexual misconduct:

- Telephone: 720-524-5640
- Online: <https://safesport.org/response-resolution/report>. Online reports are accepted 24 hours a day, 7 days a week.
- Regular mail:

U.S. Center for SafeSport
c/o Response and Resolution Office
1385 South Colorado Boulevard, Suite A-706
Denver, Colorado 80222

ii. Proactive policies

Conduct by a Covered Individual that could violate a proactive policy should be reported to the relevant, promulgating organization. If the relevant, promulgating organization is an LAO, the LAO must report the matter to its NGB. The NGB, in turn, should report the possible violation to the Office.

b. No assessment of credibility or validity

The obligation to report is broader than reporting the criminal arrest of a Covered Individual; it requires reporting to the Office any conduct that comes to the Covered Adult's attention which, if true, would violate the *Code*. Questions about whether conduct triggers a reporting obligation should be directed to the Office.

Individuals should not investigate, or attempt to evaluate the credibility or validity of allegations involving sexual misconduct, as a condition of reporting to the Office.

c. Initial disclosure to LAO, NGB or the USOC

If the possibility of sexual misconduct under the *Code* is first disclosed to a Covered Adult at an LAO, NGB or the USOC, that Covered Adult *must* promptly report the possibility of sexual misconduct, in writing, to the Office.

d. Identity of Third-party Reporter and Reporting Party

The Office will not identify or use the name of a Third-party Reporter. Nor will it publicly release a Reporting Party's identifying information.

3. Ongoing obligation

- a.** The obligation to report is an ongoing one and is not satisfied simply by making an initial report. The obligation includes reporting, on a timely basis, all information about which a Covered Adult becomes aware.
- b.** If a Covered Adult learns additional information, including information regarding the nature of an incident, the identity of witnesses, statements

regarding the incident (including statements by the Reporting Party, Responding Party or a Third-party Reporter), or the existence of evidentiary material (including any documents, electronic communications, emails, text messages, medical reports, photographs, audio or video recordings, or social media activity), it must be reported promptly to the Office.

- c. The ongoing obligation does not require, and persons should not attempt to conduct, an investigation into possible sexual misconduct. The Office, however, recognizes the potential need for an organization to gather sufficient facts to ensure the safety of its constituents that may be impacted by the alleged misconduct.

4. Reports concerning child abuse or neglect—separate obligation to report to legal authorities

A report of child abuse or neglect to the Office as required under this policy *does not* satisfy any separate obligation an individual or organization may have under federal or applicable state law to report known or suspected child abuse or neglect.

- a. Covered Adults must report suspicions or allegations of child abuse or neglect to both the Office and appropriate legal authorities. If an allegation reported to the Office involves child abuse or neglect, the Office will also comply with all federal or state reporting requirements.
- b. *No one should investigate suspicions or allegations of child abuse or neglect or attempt to evaluate the credibility or validity of allegations, as a condition of reporting to the appropriate legal authorities.* For state-by-state reporting information, visit

<https://www.childwelfare.gov/topics/responding/reporting/>.

5. No statute of limitations

Civil or criminal statutes of limitations do not affect or negate the obligation of a Covered Adult to report possible sexual misconduct to the Office under the *Code* and should be reported to the Office, regardless of when it occurred.

6. Anonymous reports

Reports may be made to the Office anonymously. Anonymity means that the identity of the individual who makes the report is not known to the Office. It does **not** mean that the information provided will be protected.

However, an anonymous report may limit the Office's ability to investigate and respond to a complaint. And, if a Covered Adult reports anonymously, it may not be possible for the Office to verify that mandatory reporting obligations have been satisfied. *Consequently, the Office strongly discourages Covered Adults from reporting anonymously.*

B. Confidentiality and privacy

1. Confidentiality for a Reporting Party

If a Reporting Party would like the details of an incident to be kept confidential, the Reporting Party may speak with the USOC's Athlete Ombudsman's Office.

The USOC Athlete Ombudsman provides independent, cost-free advice to athletes regarding the opportunity to participate in protected competition, and the various policies and procedures associated with participating in sport at an elite level, including SafeSport issues. Confidentiality parameters will be discussed at the outset of any communication and may be limited by mandatory

reporting requirements, including cases of immediate threat or danger, or abuse of a Minor.

The Athlete Ombudsman can be reached by phone: 1-800-ATHLETE, 719-866-5000, or via email: athlete.ombudsman@usoc.org. For more information, visit www.athleteombudsman.org.

2. Reporting Party request for confidentiality

If the Office receives notice of possible sexual misconduct, but a Reporting Party does not wish for their name or identity to be shared, does not wish for an investigation to take place or does not want a formal resolution to be pursued, the Reporting Party may make such a request to the Office, which will evaluate the request.

- a. In cases where a Reporting Party requests confidentiality and the circumstances allow the Office to honor that request, the Office will not pursue formal action.
- b. In cases indicating pattern, predation, threat, use of weapons and/or violence, the Office will likely be unable to honor a request for confidentiality.

3. Privacy

Information will be shared only as necessary with investigators, witnesses and the Responding Party. It will be necessary for the Office to (a) notify the NGB of an allegation involving a Covered Individual from that NGB, (b) if the Office seeks an interim measure, (c) if the Office proceeds to a full investigation, and (d) any final decision regarding whether a violation occurred and sanctions, if any. But the Office will not disclose the identity of a Reporting Party to the NGB unless necessary to the case.

4. Parental notification

The Office reserves the right to notify parents/guardians of Reporting Parties regarding any health or safety risk.

III. RESOLUTION PROCEDURES

Proceedings may be conducted by the Office and/or its designees. The timing and scope of the proceedings will be based upon the particular circumstances of the matter at issue. While applying the *Procedures* consistently in similar situations is a priority, they are flexible and will not be applied the same way in every situation. The Office reserves the right to modify its processes as it deems necessary.

Absent compelling circumstances, cases involving more than one Reporting Party and/or more than one Responding Party will be treated as a single matter throughout resolution proceedings, including arbitration, if any.

A. Participation

1. Advisors

a. Right to an advisor

The Reporting Party and Responding Party are entitled to an advisor of their choosing to guide and accompany them throughout proceedings. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is both eligible and available. People who may be called as witnesses may not serve as an advisor.

Each party is entitled to be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake, interviews and hearings. An advisor should help their advisee prepare for each meeting, and is expected to advise ethically, with integrity and in good faith.

b. Rules

Each advisor is subject to the same rules, whether or not the advisor is an attorney:

- i. An advisor may not present on behalf of their advisee in a meeting, interview or hearing and should request or wait for a break in the proceeding if the advisor wishes to interact with Office officials.
- ii. An advisor is expected to refrain from interference with the Office's proceedings and may be asked to leave any meeting if an Office official considers the advisor to be disruptive or otherwise failing to respect the limits of the advisor role.
- iii. No audio or video recording of any kind is permitted during meetings with Office officials other than as authorized by the Office.

2. Participation of Reporting Party and Responding Party

a. Opportunity to provide evidence

During an investigation, both the Reporting Party and the Responding Party are permitted to provide evidence, including written statements, lists of potential witnesses and other physical or documentary evidence.

b. Cooperation and adverse inferences

Full cooperation and participation in the investigation process is important to ensure that all relevant facts and evidence are presented to the Office so it can determine whether a *Code* Violation occurred. If a party declines to cooperate or participate in an investigation, the Office will make its decision based

on the available evidence. If a Responding Party does not cooperate with the Office, an adverse inference may be drawn.

c. Witnesses

Any witness scheduled to participate in an arbitration must consent to be interviewed by the Office prior to any hearing, unless the Office otherwise agrees to the witness's participation.

B. Preliminary inquiry

1. Initiating proceedings

- a. When the Office receives notice of a matter within its exclusive authority, or accepts a matter within its discretionary authority, it will undertake a preliminary inquiry to determine if there is (a) reason to believe (b) a Covered Individual (c) violated the *Code*. If, after a preliminary inquiry, the Office concludes there is reason to believe a Covered Individual has violated the *Code*, it will initiate proceedings, which may include an informal or formal resolution.
- b. The Office may initiate proceedings without a formal report, and reserves the right to initiate proceedings without a report from, or participation by, the Reporting Party.

2. Interim measures

The Office may, at any point before a matter is final, seek interim measures as set forth below in Part V.

C. Informal resolution

At any time prior to an arbitrator's final decision, the Office has the authority to reach an informal resolution of any matter. An informal resolution is a final disposition of the matter and the final disposition will not be confidential.

D. Formal resolution—full investigation

If the Office determines that a formal resolution process is necessary, it will appoint trained investigators, usually within two business days of determining that a formal resolution should proceed. The number of investigators and the length of the investigation will depend on the nature and/or complexity of the matter.

1. Steps

The investigator(s) may take the following steps:

- a. Seek to notify the Reporting Party that the Office is conducting an investigation into the possible *Code* Violation and inform the Reporting Party of the right to meet with the investigator and present evidence in support of the complaint along with the names and/or contact information of any potential witnesses with direct knowledge of the allegations.
- b. Seek to interview the Responding Party and advise the Responding Party of the nature of the allegation before making a determination. The Responding Party will be provided the opportunity to present a response to the allegations, including evidence and the names and/or contact information of potential witnesses with direct knowledge of the allegations.
- c. Seek to interview witnesses with direct knowledge of the allegations.
- d. Seek evidence and take any other action as the investigator may deem relevant to the investigation.
- e. Review the evidence provided by a Third-party Reporter, the Reporting Party, the Responding Party or any other source.
- f. Document all investigative efforts, including but not limited to interviews, receipt of relevant

documentation, database searches, and review and collection of other publicly-available information (e.g., social media, public records).

2. Closing the investigation

At any point prior to final resolution the Office may close the investigation if (a) the investigator could not conduct or complete the investigation, (b) it is determined the Office does not have authority or jurisdiction over the alleged Violation or (c) it is determined there is no reason to believe that there has been a Violation. The Office may, at its discretion, reopen any case closed under this section.

3. Investigative report

Upon completing the investigation, the investigator will prepare a report that, based on the preponderance of the evidence, sets forth findings of fact and references disputed facts and any credibility assessments. The investigator's report will also state whether the Responding Party violated the *Code*. If it is determined that the Responding Party violated the *Code*, the investigator will include in the report a recommended sanction.

4. The Director of Investigation's Decision

The Director of Investigations (Director) will consider the investigative report and any other relevant information. If the Director decides no further investigation is necessary, the Director will issue a Decision that (a) states whether a violation of the *Code* occurred, based on a preponderance of the evidence, (b) the *Code* Violation and (c) the sanction to be imposed (if any), consistent with the Sanctioning Guidelines. The Decision will include a summary of the relevant facts, evidence relied upon and the rationale for the Decision. Names of witnesses and parties will be replaced with alpha-numeric identifiers.

5. Notice of Director's Decision

The Director will provide written notice and a copy of the Decision to the Responding Party and the Reporting Party. The written notice will state the Responding Party's opportunity to request a hearing before the arbitration body to challenge all or part of the Decision. The Decision will also include notice of the Reporting Party's right, as discussed below, to request a hearing before the arbitration body to challenge a determination that the Responding Party did not violate the *Code*. Notice and receipt may be accomplished either through actual notice or constructive notice. Constructive notice is sufficient for all purposes for which notification is required under these *Procedures*.

a. Actual notice

Actual notice and receipt may be accomplished by any means that conveys actual knowledge of the matter to the person. Actual notice and receipt shall be effective upon delivery.

b. Constructive notice

Constructive notice and receipt may be accomplished by third-party courier, email or U.S. Postal mail.

- i. Notice shall be sent to the person's most recent mailing address or email address on file (taking into account the most recent contact information on file with the Office or the LAO, NGB or USOC, as relevant). Also, if the person has provided the Office with the name and contact information of a designated advisor, notice may be sent to the advisor's most recent mailing or email address. Notice shall be achieved if the third-party courier indicates delivery or if the U.S. Postal mail is not returned within a reasonable period of time.

- ii. Constructive notice and receipt shall be effective one business day after delivery by a third-party courier or email or five business days after depositing the notice with the U.S. Postal Service.

6. Options

a. Reporting Party

If the Director decides there was no violation of the *Code* by the Responding Party, the matter will be closed. If, however, the Reporting Party is an Athlete or Non-athlete Participant, then the Reporting Party may initiate arbitration within five business days to request a finding that the Responding Party violated the *Code*.

b. Responding Party

If a violation of the *Code* is found, the Responding Party shall have five business days from receipt of the Director's notice to request a hearing concerning the Director's Decision. The Responding Party may request a hearing concerning the Director's finding(s) that there was a violation of the *Code*, the sanction or both. If the Responding Party fails to request a hearing within five business days, the Director's Decision shall go into effect unless the Director determines that the Responding Party has shown good cause for an extension of the time to request a hearing.

c. Interim measures and sanctions remain in effect pending arbitration

All interim measures and sanctions imposed by the Office will be in effect until arbitration, if any, is final. However, the Responding Party may request that the Director delay implementation of the sanctions until the arbitration is final. Whether to

delay implementation of the sanctions rests in the sole discretion of the Director and is not reviewable.

7. Arbitration

Any arbitration will be conducted pursuant to the *Supplementary Rules for U.S. Olympic and Paralympic SafeSport Arbitrations (Rules)*. On receiving a hearing request from the Responding Party, the Office will initiate an arbitration as provided for in the *Rules*. If these *Procedures* conflict with the *Rules*, the *Rules* govern.

8. Reopening a case

At any time after an informal resolution, Decision or arbitration is final, either the Reporting Party or Responding Party may request that the Office reopen a matter to consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of the new evidence and its potential impact must be included in this request. Whether to reopen a case is within the Director's sole discretion.

IV. MISCONDUCT RELATED TO THE OFFICE'S PROCEEDINGS

When the Office is engaged in proceedings related to an actual or suspected *Code* Violation, and even after a matter is final, the following behavior by a Covered Individual may be considered misconduct, which violates these *Procedures*, and may give rise to sanction: abuse of process, failure to report, intentionally making a false report, or Retaliation.

A. Abuse of process

Direct or indirect abuse of or interference with Office proceedings by: (a) falsifying, distorting or misrepresenting information; (b) destroying or concealing information prior to or during an investigation; (c) attempting to discourage an individual's proper participation in or use of, the Office's

processes; (d) harassing or intimidating (verbally or physically) any person involved in the Office's processes before, during and/or following proceedings (including up to and through arbitration); (e) publicly disclosing a Reporting Party's identifying information; (f) failing to comply with an interim measure or other sanction; or (g) influencing or attempting to influence another person to commit abuse of process.

B. Failure to report

A failure by a Covered Individual to report actual or suspected misconduct that could violate the *Code*.

C. Intentionally making a false report

A report that is intentionally false or made maliciously without regard for truth.

V. INTERIM MEASURES

At any point before a matter is final through these *Procedures* or arbitration, interim measures may be appropriate to ensure the safety or well-being of the Reporting Party, Athletes, other Non-athlete Participants or the Responding Party. Interim measures may also be appropriate where an allegation against the Responding Party is sufficiently serious that the Responding Party's continued participation could be detrimental to sport or its reputation. Nothing in these *Procedures* prevents the Office, LAO, NGB or USOC from taking appropriate interim measures upon notice of an imminent threat of harm. In such emergency circumstances, it may be appropriate to immediately remove a Covered Individual to address such a threat.

A. Rules

Any interim measures hearing will be conducted according to the *Rules*.

B. Scope

The interim measures hearing is not to be a full hearing on the merits and is limited to determining whether there exists reasonable cause to impose one or more interim measure(s).

C. Measures

Interim measures may include, but are not limited to, altering training schedules, providing chaperones, implementing contact limitations between the parties, and suspensions.

VI. SANCTIONING GUIDELINES

Sanctions will be reasonable and proportionate to the *Code* Violation and surrounding circumstances with the intended effect of protecting relevant participants.

A. Possible sanctions

One or more of the following sanctions may be recommended or imposed singularly or in combination: (a) written warning; (b) educational or behavioral programs; (c) loss of privileges; (d) probation; (e) suspension or other eligibility restrictions, up to and including permanent ineligibility. The Office reserves the right to lessen or broaden any range of recommended sanctions in the case of mitigating circumstances or egregiously offensive behavior.

The Office may maintain a searchable database of Covered Individuals who have had their eligibility restricted or suspended under these *Procedures* on or after March 3, 2017.

B. Considerations

Factors relevant to determining appropriate sanctions include, without limitation:

1. Seriousness of the Violation;
2. The Responding Party's prior history;
3. Ages of individuals involved;

4. Whether the Responding Party poses an ongoing threat to the safety of others;
5. Voluntary disclosure of offense and/or cooperation by the Responding Party;
6. Disposition of an investigation by state or federal law authorities;
7. Real or perceived impact of incident on the Reporting Party, NGB(s) or USOC; and
8. Other mitigating and aggravating circumstances.

C. Reciprocity

A sanction as to one NGB's Covered Individual, resulting from the Office's exercise of its exclusive or discretionary authority, shall also be enforced by the USOC and all other NGBs and LAOs.

VII. RELATED PROCEEDINGS

A. Effect of criminal or civil proceedings

Because the standards for finding a violation of criminal law are different from the standards for finding a violation of the *Code*, the resolution of a criminal proceeding is not determinative of (but may be relevant to) whether a violation of the *Code* has occurred, regardless of the outcome of any criminal process. Conduct may constitute sexual misconduct under the *Code* even if the Responding Party is not charged, prosecuted or convicted for the behavior that constitutes a potential violation of the *Code*, is acquitted of a criminal charge, or legal authorities decline to prosecute.

The Office's resolution will not typically be altered or precluded on the grounds that (a) a civil case or criminal charges involving the same incident or conduct has been filed, or (b) that charges have been dismissed or reduced; or (c) a lawsuit has been settled or dismissed. However, the Office may:

1. Undertake a delay in its investigation or resolution process to avoid any conflict or interference with law enforcement proceedings; and/or
2. Comply with a law enforcement request for cooperation when criminal charges associated with the incident or conduct that invoked this process is being investigated.

B. Effect of criminal conviction

If the Responding Party is convicted of a crime or subject to a Criminal Disposition related to the underlying misconduct, the Office may either investigate or conclude that a violation of the *Code* occurred based on a conviction or Criminal Disposition. If a conclusion is reached that a violation of the *Code* occurred, the Office may issue a sanction.

VIII. USE OF MATERIALS

Materials created or produced by the Office and marked confidential as part of these *Procedures* and any arbitration under the *Rules* shall not be disclosed outside those proceedings, except as required by law.



**SUPPLEMENTARY *RULES* FOR U.S. OLYMPIC AND
PARALYMPIC SAFESPORT ARBITRATIONS**

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SUPPLEMENTARY RULES FOR U.S. OLYMPIC AND PARALYMPIC SAFESPORT ARBITRATIONS

Effective as of March 21, 2018

*All capitalized terms not otherwise defined here shall be defined as set forth in the *SafeSport Code for the U.S. Olympic and Paralympic Movement*.

R-1. Application

These *Supplementary Rules for U.S. Olympic and Paralympic SafeSport Arbitrations (Rules)* shall apply to arbitrations arising out of the *SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement (Procedures)*. No other Arbitration Rules shall be applicable.

R-2. Scope

Arbitration shall resolve only whether a Responding Party violated the *SafeSport Code for the U.S. Olympic and Paralympic Movement (Code)* and/or the appropriate sanction (if any). Challenges to, or complaints about, any organizational practices or procedures shall not be addressed and the arbitrator shall be limited to evaluating whether a Covered Individual violated the *Code* and, if so, the appropriate sanction.

R-3. Arbitrator qualifications

The pool of arbitrators for SafeSport cases shall consist of individuals who are U.S. citizens and meet the SafeSport Arbitrator Qualifications (Exhibit 3), as determined by the arbitration body. Any reference to arbitrator shall also refer to an arbitration panel consisting of three arbitrators, if applicable. All arbitrators in the SafeSport arbitrator pool will receive specialized training.

R-4. Parties

When the Responding Party requests a hearing under the *Rules*, the parties to the arbitration will be the Office and the Responding Party.

When the Reporting Party requests a hearing under the *Rules*, the parties to the arbitration will be Reporting Party and the Responding Party. Any reference to the Office in these *Rules* shall refer to the Reporting Party. A reference to the parties, the Office, the Responding Party or the Reporting Party will include any parent or guardian of a Minor, unless otherwise stated herein.

R-5. Advisor

Any party may have a single advisor, at that party's own expense. The advisor may but need not be an attorney. The Responding Party's advisor (and only in a Reporting Party initiated proceeding, the Reporting Party's advisor), if any, may participate in the pre-hearing conference, confer with the advisee during the hearing, clarify procedural questions, present opening and closing arguments on behalf of the advisee, suggest questions to the advisee and the hearing panel during witness examinations, or to the extent direct examination by the parties is permitted, question witnesses on behalf of the advisee. A party intending to have an advisor shall notify the other party and the arbitration body of the name and address of the advisor a minimum of 24 hours before the date set for the hearing or other proceeding at which the advisor is first to appear. The parties are responsible for keeping the arbitration body informed of any changes in advisors. Notice given to a designated advisor shall be deemed notice to the advisee.

R-6. Confidentiality

The arbitration, including all pre-hearing matters, shall be subject to the confidentiality provisions set forth in the *Procedures* and other confidentiality policies adopted by the U.S. Center for SafeSport Response and Resolution Office (Office).

R-7. Initiating arbitration

After receiving a request for an arbitration hearing and the required fees from the appropriate party under R-35, the Office will send a notice to the Responding Party, the Reporting Party and the arbitration administrator informing them that an arbitration has been initiated and

requesting confirmation of an email address to which notice will be deemed received upon mailing to such address.

The notice shall set forth (i) the alleged Violation; (ii) the sanction determined by the Office; (iii) the recipient's confidentiality obligations; and (iv) that any recipient who violates confidentiality obligations shall be subject to the jurisdiction of the Office and may be held, after proper process, to have violated the *Code*.

R-8. Number of arbitrators

There shall be one arbitrator.

R-9. Arbitrator appointment

a. Merits arbitrator

- (1) Promptly after arbitration is initiated, the arbitration body will send simultaneously to each party an identical list of nine arbitrators, all of whom shall be attorneys or retired judges. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the arbitration body of their agreement.
- (2) Within 48 hours after receiving the arbitrator list, the Office and the Responding Party each may strike the names of up to three arbitrators from the list and return the list to the arbitration body. If a party does not return a strike list within the time specified, all persons named in the list shall be deemed acceptable to that party. The names stricken by a party will not be disclosed to the other party.
- (3) From among the persons who have been approved on both lists the arbitration body shall invite an arbitrator to serve. If, for any reason, an arbitrator cannot be appointed from the submitted lists, the arbitration body shall have the power to make the appointment from among the other attorneys or retired judges of the pool, not to include any arbitrator previously stricken by a party.

b. Interim measures hearings

If an interim measures hearing is requested by the Office under R-40, it shall be heard by a single arbitrator, who is an attorney or retired judge, appointed by the arbitration body. The interim measures hearing arbitrator cannot manage the subsequent proceedings or serve as an arbitrator in a subsequent arbitration hearing of the matter.

R-10. Notice to arbitrator of appointment

Notice of the appointment of the arbitrator, whether appointed by the parties or by the arbitration body, shall be sent to the arbitrator by the arbitration body, together with a copy of these *Rules*. A signed acceptance by the arbitrator shall be filed with the arbitration body.

R-11. Jurisdiction and conflicts of interest

a. Jurisdiction

The arbitrator shall have the power to rule on the arbitration body's jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement. Any challenges to the arbitrator's jurisdiction must be made at the pre-hearing conference and shall be decided before the hearing, as set forth in R-15.

b. Conflicts of interest

- (1) Any person appointed as an arbitrator shall disclose to the arbitration body any circumstance that could affect impartiality or independence, including any bias, any financial or personal interest in the result of the arbitration, or any past or present relationship with the parties or witnesses.
- (2) The arbitration body shall communicate any information concerning a potential conflict of interest to the relevant parties and, as appropriate, to the arbitrator.
- (3) A party may file an objection with the arbitration body contesting an arbitrator's continued service due to a

conflict of interest. Upon receiving an objection, the arbitration body shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive. The parties may agree in writing that an appointed arbitrator subject to disqualification will not be disqualified.

c. Replacing a conflicted arbitrator

If the arbitration body determines that a selected arbitrator has a conflict of interest with one of the parties and the parties do not agree to waive the conflict, then the arbitration body shall select a substitute arbitrator from the remaining attorneys or retired judges named on the arbitrator pool list. If the appointment cannot be made from the list, the arbitration body shall have the power to make the appointment from among other attorneys or retired judges in the arbitrator pool without the submission of additional lists, not to include any arbitrator previously stricken by a party.

R-12. Vacancies

If an arbitrator is no longer able to hear a case for which the arbitrator has been appointed, the arbitration body shall select a substitute arbitrator from the remaining attorneys or retired judges. If the appointment cannot be made from the list, the arbitration body shall have the power to make the appointment from among the other attorneys or retired judges of the full arbitrator pool without the submission of additional lists, not to include any arbitrator previously stricken by a party.

R-13. Submissions to, and communication with, arbitrator

Except as provided under R-27.d., no party shall communicate unilaterally concerning the arbitration with an arbitrator or a candidate for an arbitrator position. Any documents submitted by any party to the arbitration body or to the arbitrator (with the exception of arbitrator strike lists under R-9) shall simultaneously be provided to the other party or parties to the arbitration.

R-14. Hearing concerning sanctions

If a Responding Party requests a hearing concerning only the Office's sanctions, the following *Rules* apply:

a. Scope

The Violation and the underlying facts will be deemed established. The arbitrator will determine whether the sanctions imposed fall outside the range of sanctions set forth in the *Procedures* and/or are otherwise inconsistent with the cumulative conduct history of the Responding Party.

b. Standard of review

The arbitrator is authorized to modify the sanction only upon finding that the Office abused its discretion.

c. Briefing

Within 10 business days of the arbitrator's appointment, the Responding Party shall file a brief setting forth the basis for the challenge to the sanction. Within seven business days of the Responding Party's filing, the Office shall file a responsive brief.

d. Oral argument

The decision shall be based on the parties' briefs and the Director's Decision. However, the arbitrator may in the arbitrator's discretion allow for oral argument.

e. Decision

The arbitrator will render a final and binding written decision to all parties within five business days from briefing.

R-15. Pre-hearing conference

- a.** The arbitrator shall schedule as soon as practicable a preliminary pre-hearing conference with the parties by telephone or video teleconference, but no sooner than four

business days and no later than 10 business days after the arbitrator is appointed.

- b. At least two business days before the pre-hearing conference, the Responding Party shall provide the Office and arbitration body with a written answer to the Office's decision against him/her (to include a written statement containing Responding Party's summary of the factual rebuttal to the Violation and the defenses the Responding Party intends to raise at the arbitration) and the documentary evidence and witnesses that the Responding Party intends to present at the hearing. If the Responding Party fails to submit the required information, the arbitrator has the discretion to deny its admittance at the arbitration.
- c. The pre-hearing conference will be directed by the arbitrator and shall be the exclusive opportunity of the parties to address issues that need to be resolved before the hearing, including, but not limited to:
 - (1) the timeline for the exchange of evidence and witness lists;
 - (2) any expected evidentiary issues;
 - (3) any challenges to jurisdiction;
 - (4) any disputes over the disclosure or exchange of evidence; and
 - (5) the scheduling and logistics of the hearing, to include without limitation the amount of time each side will have to present its evidence. The arbitrator will attempt to schedule the hearing to be completed within a single, eight-hour day.

The arbitrator may schedule more than one pre-hearing conference only if the arbitrator determines that an additional conference is necessary. All pre-hearing issues shall be resolved at the pre-hearing conference unless the arbitrator orders briefing. If briefing is ordered, all briefs must be

submitted at least five business days before the hearing, and the issues that are the subject of the briefing shall be, whenever possible, decided before the hearing.

The arbitrator shall issue a written decision memorializing decisions made and agreements reached during or following the pre-hearing conference. All identifying information of the Reporting Party (including name), the Responding Party and witnesses shall be redacted.

R-16. Discovery

There shall be no discovery, except in exceptional circumstances as ordered by the arbitrator.

R-17. Date and time of hearing

The arbitrator shall use best efforts to ensure that the hearing is completed and the decision rendered within 15 business days of the pre-hearing conference. Although the arbitrator shall make reasonable accommodations to the parties and their advisors with regard to scheduling, the parties and their advisors have a duty to be reasonably available to ensure the ability of the arbitration process to render a reasonably prompt result. The arbitrator in the arbitrator's sole discretion may rule that the unavailability of a party's advisor is not grounds for postponing the hearing. Failure by the arbitrator or the Office to adhere to the timelines set forth herein shall not be grounds for overturning the arbitrator's decision. On good cause shown by any party, the arbitration hearing process shall be expedited as may be necessary in relation to the Responding Party's potential participation in a competition as required by the Ted Stevens Olympic and Amateur Sports Act.

R-18. Place of hearing

The hearing will be conducted telephonically or by videoconference except as authorized by the arbitrator in unique circumstances, in which case the hearing may be held in person at a location in the United States determined by the arbitrator. If a hearing is held in

person, the arbitrator may nonetheless permit witnesses to appear behind screens, by telephone or via videoconference.

R-19. Attendance

Unless the arbitrator and the parties agree otherwise, only the following individuals shall be present at the hearing: (1) the Office; (2) the Responding Party; (3) the Reporting Party; (4) the parties' respective advisors; and (5) witnesses during their own testimony.

R-20. Oaths

Before proceeding with the hearing, each arbitrator will take an oath of office if required by law. The arbitrator will require witnesses to testify under oath if it is required by law.

R-21. Interpreters

All arbitration proceedings shall be conducted in English. Any party who would like an interpreter is responsible for coordinating directly with the interpreter and is responsible for the costs of the interpreter service. The interpreter must be free of conflicts of interest.

R-22. Continuance

The arbitrator may continue any hearing upon agreement of the parties, upon request of a party or upon the arbitrator's own initiative. Unless agreed, postponements shall be discouraged and only granted in compelling circumstances. A party or parties causing a postponement of a hearing will be charged a postponement fee, as set forth in the arbitration fee schedule (Exhibit 1).

R-23. Arbitration in the absence of a party or advisor

The arbitration may proceed in the absence of any party or advisor who, after notice, fails to be present or to obtain a postponement. The arbitrator shall require the party who is present to submit evidence that the arbitrator may require for the making of a decision.

R-24. Standard of proof

The arbitration body shall use a preponderance of the evidence standard to determine if a Covered Individual has violated the *Code*.

R-25. Rules of evidence

- a. Strict conformity to legal *Rules* of evidence shall not be necessary, and hearsay evidence may be considered.
- b. Any party may introduce the Director's Decision into evidence, and the arbitrator shall give it appropriate weight.
- c. The arbitrator shall determine the admissibility, relevance and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative, irrelevant or unreliable.
- d. The arbitrator may draw an adverse inference by failure of the Responding Party to cooperate, participate or testify during the Office's investigation or the arbitration.
- e. The arbitrator shall take into account applicable principles of legal privilege, including without limitation those involving the confidentiality of communications between an attorney and client and between a physician and patient.
- f. Any statement from a Minor, be it written, recorded or live, and whether direct or hearsay, shall be admissible.

R-26. Evidence by affidavit

The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit and shall give it such weight as the arbitrator deems appropriate after considering any objection made to its admission.

R-27. Hearing

Unless the parties agree that the arbitrator can determine the case without an oral hearing and on written briefings alone (which the parties may do whether the matter relates to liability and sanctions or sanctions only), the arbitrator will hold an oral hearing.

a. Arbitrator to manage proceedings expeditiously

The arbitrator, exercising discretion, shall conduct the proceedings expeditiously and may direct the order of proof,

bifurcate the hearing between the Violation and sanction portions of the hearing, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

b. Opening statements

Each party shall be entitled to present a concise opening statement prior to the presentation of evidence. The Office or its advisor shall present its opening statement first, followed by the Responding Party.

c. Presenting evidence

Both the Office and the Responding Party shall be entitled to an equitable amount of time to present evidence in support of or in opposition to the alleged Violations, as determined by the arbitrator at the pre-hearing conference. Absent exceptional circumstances, the parties will be expected to complete the hearing in a single, eight-hour business day. The arbitrator will track the time used by each party during the course of proceedings and enforce the time limits to ensure equitable time to both parties. The parties will be permitted, subject to any pre-hearing orders, to present documentary evidence through the submission of exhibits and to present testimony through affidavit or in-person testimony of witnesses.

The Office will present its evidence first. The Responding Party will present its evidence second. The Office will then present any rebuttal evidence.

d. Examining witnesses

(1) The Responding Party and Reporting Party shall be subject to questioning by only the arbitrator unless the Responding Party or Reporting Party agrees to direct examination and cross-examination by the opposing party.

(2) Unless the Responding Party and/or Reporting Party elect to be questioned directly by the parties, no later than five days before the hearing, the Office and the Responding Party each may submit, *ex parte*, proposed questions and lines of inquiry to the arbitrator for the questioning of the Responding Party and Reporting Party. The arbitrator will review the submitted questions and lines of inquiry and will, in the arbitrator's discretion, determine which are appropriate and relevant based on the understanding of the matter and to ensure the arbitrator's ability to render a decision in the matter. The arbitrator also may ask such other questions which the arbitrator deems appropriate.

(3) If the arbitrator has been the sole questioner of the Responding Party or Reporting Party, then after the arbitrator's direct questioning of the Responding Party or Reporting Party is completed, the witness will be temporarily excluded from the hearing so that the arbitrator can discuss with each of the parties separately appropriate follow-up questions or supplemental lines of inquiry for the arbitrator to consider. The arbitrator will ask follow-up questions of the witness that the arbitrator deems appropriate.

(4) The arbitrator shall also question any witness. The parties may also question all other witnesses directly, provided that the arbitrator shall have the authority to limit questioning of witnesses or lines of inquiry based on, without limitation, relevance, that the questioning is cumulative, or that the questioning has become harassing or abusive.

(5) Examining Minors

The presumption is that a Minor will not testify live at a hearing; however, with the permission of the Minor's parents or guardians (or in extraordinary circumstances, without such permission), the Minor may testify if so desired. The arbitrator shall determine the manner in

which Minor's evidence shall be given, including whether any or all questioning of the Minor (live or via video) will be completed outside the presence of their parent(s) or guardian(s), bearing in mind (a) the objective of achieving a fair hearing, (b) the possible damage to a Minor's welfare from giving evidence, and (c) the possible advantages that the Minor's evidence will bring to determining the facts.

A Minor may only be asked to testify in exceptional circumstances as determined by the arbitrator. In making this decision, the arbitrator shall consider:

- (a) the Minor's wishes and feelings, in particular, the Minor's willingness to give evidence (an unwilling Minor should rarely, if ever, be obligated to give evidence);
- (b) the Minor's particular needs and abilities;
- (c) whether the case depends on the Minor's allegations alone;
- (d) corroborative evidence;
- (e) the age of the Minor;
- (f) the maturity, vulnerability, understanding, capacity and competence of the Minor;
- (g) whether justice can be done without further questioning of the Minor;
- (h) the wishes and views of any parent, person with parental responsibility for the Minor, or any guardian, if appropriate; and
- (i) whether the Minor has given evidence to another tribunal or court related to the subject matter of the proceeding, the way in which such evidence was given, and the availability of that evidence.

e. Role of the Reporting Party

In arbitrations requested by the Responding Party, the Reporting Party is not a party, but has the right to be present during the hearing and to give testimony as a witness if called, but shall not otherwise participate in the hearing.

f. Closing statements

Each party will be entitled to present a concise closing statement after the close of evidence and before the hearing is concluded. The Office will present its closing statement first, followed by the Responding Party, and the Office will be allowed time for a reply.

g. Hearing closed to the public

The hearing shall be closed to the public.

h. No disclosure of information

All information obtained by the Office, Responding Party or the Reporting Party during the arbitration shall be subject to the stated limits set forth in the Office's *Procedures*.

i. Recording

At the request of any party or the arbitrator, hearings shall be recorded by the arbitration body and retained by the Office in its confidential files, but shall not be made available to any party or third party except in accordance with the *Procedures*. The requesting party is responsible for arranging the recording.

R-28. Closing of hearing

After all evidence has been submitted at the hearing, the arbitrator shall specifically inquire of each party whether it has any further evidence to offer or witnesses to be heard. Unless the arbitrator determines that additional evidence or witness(es) are required to resolve the controversy, the arbitrator will declare the hearing closed. There shall be no post-hearing briefing ordered except in exceptional

circumstances. If documents or responses are to be filed as directed by the arbitrator, or if briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs.

R-29. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these *Rules* has not been complied with and who fails to promptly state an objection in writing shall be deemed to have waived the right to object.

R-30. Extensions of time

For good cause shown, the arbitrator may extend any period of time established by these *Rules*, except the time for making the decision, keeping in mind the need to resolve these disputes expeditiously; the unavailability of an advisor—after an arbitrator’s efforts to reasonably accommodate the advisor’s schedule—shall not be considered good cause except in exceptional circumstances. The arbitrator shall notify the parties of any extension.

R-31. Notice and receipt

The parties each must provide an email address to the arbitration body and opposing parties/advisors upon initiation of an arbitration under the *Rules*. Notice sent to that email address shall be considered actual notice to the party effective upon delivery.

R-32. Decisions

a. Time

The reasoned decision shall be made promptly by the arbitrator after the close of evidence, and, unless otherwise agreed by the parties or specified by law, no later than seven business days from the date of close of the evidence or any briefing ordered by the arbitrator.

b. Form

In all cases, the arbitrator shall render a written, reasoned final decision, which shall be signed by the arbitrator. All

identifying information of the Reporting Party (including name), and witnesses (other than the Responding Party) shall be redacted. If the arbitrator determines that there has been no Violation, then the Responding Party may request that the arbitrator redact their name and/or identifying information in the final decision.

c. Scope

The arbitrator may grant such remedy or relief the arbitrator deems just and equitable and within the scope of the *Code* and the Sanctioning Guidelines.

d. Delivery to parties

The final decision shall be deemed delivered to the parties if transmitted as provided in R-31.

R-33. Modifying decision

Within three business days after the transmittal of the arbitrator’s final decision, any party, upon notice to the other parties, may request the arbitrator, through the arbitration body, to correct any clerical, typographical or computational errors in the decision. The arbitrator is not empowered to re-determine the merits of any matter already decided. The other parties shall be given two business days to respond to the request. The arbitrator shall dispose of the request within two business days after transmittal by the arbitration body to the arbitrator of the request and any response thereto.

R-34. Appeal

The arbitration decision shall be considered final and binding. The parties to arbitration waive, to the fullest extent permissible by law, any right to challenge in court the arbitrator’s decision.

R-35. Filing fees and expenses

- a. The arbitration body shall prescribe filing and other administrative fees and expenses to compensate it for the cost of providing services. The fees in effect when the fee or charge is incurred shall be applicable.

b. Initiating arbitration

1. Arbitration requested by Responding Party

a) Arbitration fees and expenses

The Responding Party shall pay a full deposit for all fees and expenses associated with the arbitration as set forth in Exhibit 1. If the Responding Party fails to provide the deposit, then the arbitration may not proceed.

b) Hardship exemption

In the case of Responding Parties who are Athletes, the Responding Party may, at the discretion of the Office, obtain a hardship exemption from payment of some of these fees through written certification that they have insufficient funds to cover arbitration (*see* Exhibit 2) If the Office grants an exemption, the Office shall pay all fees and expenses associated with the arbitration as set forth in Exhibit 1.

2. Arbitration requested by Reporting Party

a) Arbitration fees and expenses

The Reporting Party shall pay a full deposit for all fees and expenses associated with the arbitration as set forth in Exhibit 1. If the Reporting Party fails to provide the deposit, then the arbitration may not proceed.

b) Hardship exemption

In the case of Reporting Parties who are Athletes, the Reporting Party may, at the discretion of the Office, obtain a hardship exemption from payment of some of these fees through written certification that they have insufficient funds to cover arbitration (*see* Exhibit 2). If the Office grants an exemption, the

Office shall pay all fees and expenses associated with the arbitration as set forth in Exhibit 1.

R-36. Other fees and expenses

The expenses of witnesses and translators for any party shall be paid by the party producing such witnesses or translators. Parties shall be responsible for their own advisor's fees and costs, and all other expenses not expressly assumed by the Office. A party who successfully seeks a continuance shall pay a continuance fee as set forth in Exhibit 1.

R-37. Arbitrator's compensation

- a.** Arbitrators shall be compensated at the rates set forth in the arbitration fee schedule (Exhibit 1).
- b.** If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator and the arbitration body, and confirmed to the parties. Any arrangement for the compensation of an arbitrator shall be made through the arbitration body and not directly between the parties and the arbitrator.

R-38. Allocating fees and expenses

The arbitrator shall, in the final reasoned decision, allocate fees and expenses as follows:

- a.** Arbitrations requested by the Responding Party
 - 1. If a Violation is not found, the Office shall reimburse the Responding Party for all arbitration fees and expenses paid to the arbitration body pursuant to R-35.
 - 2. If the case involves multiple Violations, and the arbitrator modifies some Violations but not all, the arbitrator has the discretion to allocate the fees and expenses paid to the arbitration body pursuant to R-35.
 - 3. If, in a sanctions-only hearing, the sanction is reduced the arbitrator may reapportion responsibility for all

arbitration fees and expenses paid to the arbitration body pursuant to R-35 between the Office and the Responding Party.

b. Arbitrations requested by the Reporting Party

If a Violation is found, the Office shall reimburse the Reporting Party for all arbitration fees and expenses paid to the arbitration body pursuant to R-35.

R-39. Interpreting and applying the *Rules*

The arbitrator shall interpret and apply these *Rules* insofar as they relate to the arbitrator's powers and duties.

R-40. Interim measures

If the Office seeks interim measures, it will offer an opportunity for a hearing. The following *Rules* govern interim measures hearings.

a. Notice to the Responding Party

The Responding Party will be notified as soon as possible of (a) the interim measure and (b) the opportunity for a hearing to take place no later than 72 hours after the Responding Party requests a hearing (unless otherwise agreed by the parties). The Interim Measure is effective upon issuance of the Notice subject to stay procedures set forth in the Practices and Procedures.

b. Arbitrator

If the Office imposes or seeks to impose interim measures prior to the appointment of the arbitrator as provided in R-9, then a special arbitrator will be appointed by the arbitration body solely to conduct the interim measures hearing. This special arbitrator shall not be considered for appointment pursuant to R-9. If the Office imposes or seeks to impose interim measures after the appointment of the arbitrator, then the appointed arbitrator shall conduct the interim measures hearing.

c. Filing fees and expenses

The arbitration body shall prescribe filing and other administrative fees and expenses to compensate it for the cost of providing services. The fees in effect when the fee or charge is incurred shall be applicable. The Office shall pay a deposit for 2/3's of the fees and expenses and the requesting party shall pay 1/3 of the fees and expenses associated with an interim measures arbitration as set forth in Exhibit 1.

d. Procedures

(1) Expedited proceedings

The interim measures hearing is an expedited proceeding to quickly resolve whether sufficient evidence exists to satisfy the arbitrator that the interim relief requested is appropriate on the facts and circumstances of the case. The interim measures hearing is not intended to be the hearing necessary to finally resolve whether the Responding Party has committed a Violation or what the appropriate sanctions should be, if a Violation is found to have occurred. Except in exceptional circumstances, the interim measures hearing will last no longer than two hours.

(2) Scope

The interim measures hearing will not be a hearing on the merits and is limited to determining if there is cause to impose the interim measure(s).

e. Standard of review

To impose interim measures, the arbitrator must find based on the evidence presented, that: (i) the interim measure is appropriate based on the allegations and facts and circumstances of the case as they appear to the arbitrator; (ii) the interim measure is appropriate to maintain the safety or well-being of the Reporting Party, Athletes, or other Non-athlete Participants; or (iii) the allegations against the

Responding Party are sufficiently serious that the Responding Party's continued participation in the sport could be detrimental to the reputation of sport. In all cases, there shall be a rebuttable presumption that the allegations, as presented, are true.

f. Decision

The arbitrator may approve, reject, or modify the interim measures imposed or proposed by the Office. The arbitrator shall issue a decision regarding the Office's request for interim measures either orally at the conclusion of the interim measures hearing, with a written reasoned order to follow, or by a written reasoned decision issued within 24 hours of the close of the interim measures hearing. The decision shall be given no weight in the hearing of the case.

g. No appeal

Neither the Office nor the Responding Party may appeal the arbitrator's decision. The denial of the requested relief shall not, however, prejudice the Office's right to seek interim measures in the same case in the future.

h. Final hearing expedited if interim measures imposed

If interim measures are imposed, then the time for the hearing will be expedited to the extent feasible.

Exhibit 1

JAMS ARBITRATION FEES

The arbitration body for U.S. Olympic and Paralympic SafeSport Arbitrations is JAMS, www.jamsadr.com. Applicable arbitration fees are as stated, effective March 3, 2018.

\$5,200.00 Single arbitrator

\$1,500.00 Single arbitrator, interim measures hearing

- A deposit for the full price of JAMS fees and neutral rates is due at the time an arbitration is requested. An amount of \$1,600 for single arbitrator matters is non-refundable. An amount of \$1,500 for single arbitrator, interim measures hearings, is non-refundable.
- Applicable arbitrator travel costs will be charged.
- The above fees exclude usage of facilities. If a JAMS facility is used, a room rental fee not to exceed \$300/day will be charged.

CANCELLATION/CONTINUANCE POLICY

<i>Cancellation/Continuance period</i>	<i>Fee</i>
14 days or more prior to hearing	<ul style="list-style-type: none"> • Arbitration, single arbitrator, \$3,600 is refundable • Interim Measures Hearing, non-refundable

- Hearing fees are non-refundable if time scheduled (or a portion thereof) is cancelled or continued after the cancellation date. The cancellation policy exists because time reserved and later cancelled generally cannot be replaced. In all cases involving non-refundable time, the party requesting the hearing is responsible for the fees of all parties.
- JAMS reserves the right to cancel the hearing if fees are not paid as required by the applicable cancellation date and JAMS confirms the cancellation in writing.

Exhibit 2

HARDSHIP CERTIFICATION

I, _____, certify under penalty of perjury that I qualify for a Hardship Exemption under the Supplementary *Rules* for U.S. Olympic and Paralympic SafeSport Arbitrations because I:

_____ am an Athlete, as defined in the SafeSport Policies and Procedures for the U.S. Olympic Movement, **and**

_____ do not have sufficient funds to cover the costs of arbitration as of this date.

Name (printed)

Signature

NOTARIZATION

State of _____)

SS: County of _____)

On this, the ____ day of _____, 20____, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that the same was executed for the purposes therein contained. In witness hereof, I hereunto set my hand and official seal.

Notary Public

Exhibit 3
SafeSport Arbitrator Qualifications

INDEPENDENCE

Each arbitrator shall be independent. An arbitrator is “independent” if (a) the individual has or had no material affiliation or relationship, directly or indirectly, with the United States Center for SafeSport, the United States Olympic Committee (USOC), any National Governing Body (NGB), any Paralympic Sports Organization (PSO), the Athletes Advisory Council of the USOC (AAC), and/or any other affiliated organization such as an Olympic Training Center or designated partner, and (b) such person is free of any direct or indirect relationships that create an actual or perceived conflict of interest that could reasonably be expected to interfere with the exercise of independent judgment of such person. Before an arbitrator may be selected for the JAMS SafeSport Panel, the individual shall disclose any potential conflicts of interests to JAMS.

KNOWLEDGE

In addition to independence, arbitrators shall have a demonstrated working knowledge of sexual assault, domestic violence, child sexual abuse, grooming, trust dynamics, and trauma-informed questioning/forensic interviewing protocol. Experience involving emotional, physical and sexual misconduct in sport is strongly preferred.

WORKING EXPERIENCE

Arbitrators shall have experience working in at least one of the following areas:

- In criminal law as a judge, district attorney, or defense attorney, with specific experience in sexual misconduct
- Law enforcement, with specific experience in sexual misconduct
- As a social worker
- A Title IX coordinator or investigator
- As a guardian *ad litem* and/or
- Other comparable working experience.



SAFESPORT PRACTICES AND PROCEDURES FOR THE U.S. OLYMPIC AND PARALYMPIC MOVEMENT

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**SAFESPORT PRACTICES AND PROCEDURES FOR THE
U.S. OLYMPIC AND PARALYMPIC MOVEMENT**

Effective as of March 21, 2018

I. APPLICATION AND STANDARDS

A. Application

The U.S. Center for SafeSport Response and Resolution Office (Office) uses the *SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement (Procedures)* to determine whether a Covered Individual violated the *SafeSport Code for the U.S. Olympic and Paralympic Movement (Code)*.

B. Authority

1. Exclusive authority

The Office, or its duly appointed designee, has exclusive authority over (a) actual or suspected sexual misconduct by a Covered Individual; and (b) misconduct that is reasonably related to an underlying allegation of sexual misconduct, as set forth in the *Code*. Exclusive authority means that (a) only the Office will investigate and manage any related hearings involving sexual misconduct and (b) neither the NGB nor USOC will conduct its own investigation or arbitration with respect to possible sexual misconduct, except as otherwise provided.

a. No statute of limitations or Time Bar of Any Sort

The Office is assessing a Covered Individuals current fitness to participate in sport. Accordingly, no criminal, civil, or rules-based statutes of limitations or time bars of any kind prevent the Center from investigating, assessing and considering relevant conduct in its process.

b. Limit—individuals and non-employment matters

- i. The Office's authority extends only to the conduct of *individuals*—Covered Individuals specifically. It does not regulate, investigate or audit LAO, NGB or USOC organizational practices.
- ii. The Office's exercise of any authority under its resolution proceedings are independent of any employment decisions made by an LAO, NGB or the USOC, which have sole responsibility for any employment action.

2. Discretionary authority

On the written request of an NGB or the USOC, the Office may, in its discretion, accept jurisdiction over any form of misconduct as set forth in the *Code*.

C. Substantive Standards

In resolving allegations of misconduct, the Office applies its currently effective procedures and the substantive standards in effect at the time of the alleged violation. If a report is made regarding conduct that occurred before the effective date of the *Code*, the Office will apply the relevant NGB's substantive rules and regulations and/or other standards applicable at the time of the alleged conduct.

D. Standard of proof

The Office uses the preponderance of the evidence standard to determine whether a Covered Individual violated the *Code*.

II. REPORTING, CONFIDENTIALITY AND PRIVACY

A. Reporting

1. Anyone may report

Anyone who becomes aware of possible sexual misconduct under the *Code* by a Covered Individual may report to the Office and is encouraged to do so.

2. Mandatory reporters

a. Covered Adults

i. Sexual misconduct

Covered Adults *must* report to the Office (conduct of which they become aware that could constitute (a) sexual misconduct, (b) misconduct that is reasonably related to the underlying allegation of sexual misconduct and (c) retaliation related to an allegation of sexual misconduct:

- Telephone: 720-524-5640
- Online: <https://safesport.org/response-resolution/report>. Online reports are accepted 24 hours a day, 7 days a week.
- Regular mail:

U.S. Center for SafeSport
c/o Response and Resolution Office
1385 South Colorado Boulevard, Suite A-706
Denver, Colorado 80222

ii. Proactive policies

Conduct by a Covered Individual that could violate a proactive policy should be reported to the relevant, promulgating organization. If the relevant, promulgating organization is an LAO, the LAO must report the matter to its NGB. The NGB, in turn, should report the possible violation to the Office.

b. No assessment of credibility or validity

The obligation to report is broader than reporting the criminal arrest of a Covered Individual; it requires reporting to the Office any conduct that comes to the Covered Adult's attention which, if true, would violate the *Code*. Questions about whether conduct triggers a reporting obligation should be directed to the Office.

Individuals should not investigate, or attempt to evaluate the credibility or validity of allegations involving sexual misconduct, as a condition of reporting to the Office.

c. Initial disclosure to LAO, NGB or the USOC

If the possibility of sexual misconduct under the *Code* is first disclosed to a Covered Adult at an LAO, NGB or the USOC, that Covered Adult *must* promptly report the possibility of sexual misconduct, in writing, to the Office.

d. Identity of Third-party Reporter and Reporting Party

The Office will not identify or use the name of a Third-party Reporter. Nor will it publicly release a Reporting Party's identifying information.

3. Ongoing obligation

- a.** The obligation to report is an ongoing one and is not satisfied simply by making an initial report. The obligation includes reporting, on a timely basis, all information about which a Covered Adult becomes aware.
- b.** If a Covered Adult learns additional information, including information regarding the nature of an incident, the identity of witnesses, statements

regarding the incident (including statements by the Reporting Party, Responding Party or a Third-party Reporter), or the existence of evidentiary material (including any documents, electronic communications, emails, text messages, medical reports, photographs, audio or video recordings, or social media activity), it must be reported promptly to the Office.

- c. The ongoing obligation does not require, and persons should not attempt to conduct, an investigation into possible sexual misconduct. The Office, however, recognizes the potential need for an organization to gather sufficient facts to ensure the safety of its constituents that may be impacted by the alleged misconduct.

4. Reports concerning child abuse or neglect—separate obligation to report to legal authorities

A report of child abuse or neglect to the Office as required under this policy *does not* satisfy any separate obligation an individual or organization may have under federal or applicable state law to report known or suspected child abuse or neglect.

- a. Covered Adults must report suspicions or allegations of child abuse or neglect to both the Office and appropriate legal authorities. If an allegation reported to the Office involves child abuse or neglect, the Office will also comply with all federal or state reporting requirements.
- b. *No one should investigate suspicions or allegations of child abuse or neglect or attempt to evaluate the credibility or validity of allegations, as a condition of reporting to the appropriate legal authorities.* For state-by-state reporting information, visit

<https://www.childwelfare.gov/topics/responding/reporting/>.

5. No statute of limitations

Civil or criminal statutes of limitations do not affect or negate the obligation of a Covered Adult to report possible sexual misconduct to the Office under the *Code* and should be reported to the Office, regardless of when it occurred.

6. Anonymous reports

Reports may be made to the Office anonymously. Anonymity means that the identity of the individual who makes the report is not known to the Office. It does **not** mean that the information provided will be protected.

However, an anonymous report may limit the Office's ability to investigate and respond to a complaint. And, if a Covered Adult reports anonymously, it may not be possible for the Office to verify that mandatory reporting obligations have been satisfied. *Consequently, the Office strongly discourages Covered Adults from reporting anonymously.*

B. Confidentiality and privacy

1. Confidentiality for a Reporting Party

If a Reporting Party would like the details of an incident to be kept confidential, the Reporting Party may speak with the USOC's Athlete Ombudsman's Office.

The USOC Athlete Ombudsman provides independent, cost-free advice to athletes regarding the opportunity to participate in protected competition, and the various policies and procedures associated with participating in sport at an elite level, including SafeSport issues. Confidentiality parameters will be discussed at the outset of any communication and may be limited by mandatory

reporting requirements, including cases of immediate threat or danger, or abuse of a Minor.

The Athlete Ombudsman can be reached by phone: 1-800-ATHLETE, 719-866-5000, or via email: athlete.ombudsman@usoc.org. For more information, visit www.athleteombudsman.org.

2. Reporting Party request for confidentiality

If the Office receives notice of possible sexual misconduct, but a Reporting Party does not wish for their name or identity to be shared, does not wish for an investigation to take place or does not want a formal resolution to be pursued, the Reporting Party may make such a request to the Office, which will evaluate the request.

- a. In cases where a Reporting Party requests confidentiality and the circumstances allow the Office to honor that request, the Office will not pursue formal action.
- b. In cases indicating pattern, predation, threat, use of weapons and/or violence, the Office will likely be unable to honor a request for confidentiality.

3. Privacy

Information will be shared only as necessary with investigators, witnesses and the Responding Party. It will be necessary for the Office to (a) notify the NGB of an allegation involving a Covered Individual from that NGB, (b) if the Office seeks an interim measure, (c) if the Office proceeds to a full investigation, and (d) any final decision regarding whether a violation occurred and sanctions, if any. But the Office will not disclose the identity of a Reporting Party to the NGB unless necessary to the case.

4. Parental notification

The Office reserves the right to notify parents/guardians of Reporting Parties regarding any health or safety risk.

III. RESOLUTION PROCEDURES

Proceedings may be conducted by the Office and/or its designees. The timing and scope of the proceedings will be based upon the particular circumstances of the matter at issue. While applying the *Procedures* consistently in similar situations is a priority, they are flexible and will not be applied the same way in every situation. The Office reserves the right to modify its processes as it deems necessary.

Absent compelling circumstances, cases involving more than one Reporting Party and/or more than one Responding Party will be treated as a single matter throughout resolution proceedings, including arbitration, if any.

A. Participation

1. Advisors

a. Right to an advisor

The Reporting Party and Responding Party are entitled to an advisor of their choosing to guide and accompany them throughout proceedings. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is both eligible and available. People who may be called as witnesses may not serve as an advisor.

Each party is entitled to be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake, interviews and hearings. An advisor should help their advisee prepare for each meeting, and is expected to advise ethically, with integrity and in good faith.

b. Rules

Each advisor is subject to the same rules, whether or not the advisor is an attorney:

- i. An advisor may not present on behalf of their advisee in a meeting, interview or hearing and should request or wait for a break in the proceeding if the advisor wishes to interact with Office officials.
- ii. An advisor is expected to refrain from interference with the Office's proceedings and may be asked to leave any meeting if an Office official considers the advisor to be disruptive or otherwise failing to respect the limits of the advisor role.
- iii. No audio or video recording of any kind is permitted during meetings with Office officials other than as authorized by the Office.

2. Participation of Reporting Party and Responding Party

a. Opportunity to provide evidence

During an investigation, both the Reporting Party and the Responding Party are permitted to provide evidence, including written statements, lists of potential witnesses and other physical or documentary evidence.

b. Cooperation and adverse inferences

Full cooperation and participation in the investigation process is important to ensure that all relevant facts and evidence are presented to the Office so it can determine whether a *Code* Violation occurred. If a party declines to cooperate or participate in an investigation, the Office will make its decision based

on the available evidence. If a Responding Party does not cooperate with the Office, an adverse inference may be drawn.

c. Witnesses

Any witness scheduled to participate in an arbitration must consent to be interviewed by the Office prior to any hearing, unless the Office otherwise agrees to the witness's participation.

B. Preliminary inquiry

1. Initiating proceedings

- a. When the Office receives notice of a matter within its exclusive authority, or accepts a matter within its discretionary authority, it will undertake a preliminary inquiry to determine if there is (a) reason to believe (b) a Covered Individual (c) violated the *Code*. If, after a preliminary inquiry, the Office concludes there is reason to believe a Covered Individual has violated the *Code*, it will initiate proceedings, which may include an informal or formal resolution.
- b. The Office may initiate proceedings without a formal report, and reserves the right to initiate proceedings without a report from, or participation by, the Reporting Party.

2. Interim measures

The Office may, at any point before a matter is final, seek interim measures as set forth below in Part V.

C. Informal resolution

At any time prior to an arbitrator's final decision, the Office has the authority to reach an informal resolution of any matter. An informal resolution is a final disposition of the matter and the final disposition will not be confidential.

D. Formal resolution—full investigation

If the Office determines that a formal resolution process is necessary, it will appoint trained investigators, usually within two business days of determining that a formal resolution should proceed. The number of investigators and the length of the investigation will depend on the nature and/or complexity of the matter.

1. Steps

The investigator(s) may take the following steps:

- a. Seek to notify the Reporting Party that the Office is conducting an investigation into the possible *Code* Violation and inform the Reporting Party of the right to meet with the investigator and present evidence in support of the complaint along with the names and/or contact information of any potential witnesses with direct knowledge of the allegations.
- b. Seek to interview the Responding Party and advise the Responding Party of the nature of the allegation before making a determination. The Responding Party will be provided the opportunity to present a response to the allegations, including evidence and the names and/or contact information of potential witnesses with direct knowledge of the allegations.
- c. Seek to interview witnesses with direct knowledge of the allegations.
- d. Seek evidence and take any other action as the investigator may deem relevant to the investigation.
- e. Review the evidence provided by a Third-party Reporter, the Reporting Party, the Responding Party or any other source.
- f. Document all investigative efforts, including but not limited to interviews, receipt of relevant

documentation, database searches, and review and collection of other publicly-available information (e.g., social media, public records).

2. Closing the investigation

At any point prior to final resolution the Office may close the investigation if (a) the investigator could not conduct or complete the investigation, (b) it is determined the Office does not have authority or jurisdiction over the alleged Violation or (c) it is determined there is no reason to believe that there has been a Violation. The Office may, at its discretion, reopen any case closed under this section.

3. Investigative report

Upon completing the investigation, the investigator will prepare a report that, based on the preponderance of the evidence, sets forth findings of fact and references disputed facts and any credibility assessments. The investigator's report will also state whether the Responding Party violated the *Code*. If it is determined that the Responding Party violated the *Code*, the investigator will include in the report a recommended sanction.

4. The Director of Investigation's Decision

The Director of Investigations (Director) will consider the investigative report and any other relevant information. If the Director decides no further investigation is necessary, the Director will issue a Decision that (a) states whether a violation of the *Code* occurred, based on a preponderance of the evidence, (b) the *Code* Violation and (c) the sanction to be imposed (if any), consistent with the Sanctioning Guidelines. The Decision will include a summary of the relevant facts, evidence relied upon and the rationale for the Decision. Names of witnesses and parties will be replaced with alpha-numeric identifiers.

5. Notice of Director's Decision

The Director will provide written notice and a copy of the Decision to the Responding Party and the Reporting Party. The written notice will state the Responding Party's opportunity to request a hearing before the arbitration body to challenge all or part of the Decision. The Decision will also include notice of the Reporting Party's right, as discussed below, to request a hearing before the arbitration body to challenge a determination that the Responding Party did not violate the *Code*. Notice and receipt may be accomplished either through actual notice or constructive notice. Constructive notice is sufficient for all purposes for which notification is required under these *Procedures*.

a. Actual notice

Actual notice and receipt may be accomplished by any means that conveys actual knowledge of the matter to the person. Actual notice and receipt shall be effective upon delivery.

b. Constructive notice

Constructive notice and receipt may be accomplished by third-party courier, email or U.S. Postal mail.

- i.** Notice shall be sent to the person's most recent mailing address or email address on file (taking into account the most recent contact information on file with the Office or the LAO, NGB or USOC, as relevant). Also, if the person has provided the Office with the name and contact information of a designated advisor, notice may be sent to the advisor's most recent mailing or email address. Notice shall be achieved if the third-party courier indicates delivery or if the U.S. Postal mail is not returned within a reasonable period of time.

- ii.** Constructive notice and receipt shall be effective one business day after delivery by a third-party courier or email or five business days after depositing the notice with the U.S. Postal Service.

6. Options

a. Reporting Party

If the Director decides there was no violation of the *Code* by the Responding Party, the matter will be closed. If, however, the Reporting Party is an Athlete or Non-athlete Participant, then the Reporting Party may initiate arbitration within five business days to request a finding that the Responding Party violated the *Code*.

b. Responding Party

If a violation of the *Code* is found, the Responding Party shall have five business days from receipt of the Director's notice to request a hearing concerning the Director's Decision. The Responding Party may request a hearing concerning the Director's finding(s) that there was a violation of the *Code*, the sanction or both. If the Responding Party fails to request a hearing within five business days, the Director's Decision shall go into effect unless the Director determines that the Responding Party has shown good cause for an extension of the time to request a hearing.

c. Interim measures and sanctions remain in effect pending arbitration

All interim measures and sanctions imposed by the Office will be in effect until arbitration, if any, is final. However, the Responding Party may request that the Director delay implementation of the sanctions until the arbitration is final. Whether to

delay implementation of the sanctions rests in the sole discretion of the Director and is not reviewable.

7. Arbitration

Any arbitration will be conducted pursuant to the *Supplementary Rules for U.S. Olympic and Paralympic SafeSport Arbitrations (Rules)*. On receiving a hearing request from the Responding Party, the Office will initiate an arbitration as provided for in the *Rules*. If these *Procedures* conflict with the *Rules*, the *Rules* govern.

8. Reopening a case

At any time after an informal resolution, Decision or arbitration is final, either the Reporting Party or Responding Party may request that the Office reopen a matter to consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of the new evidence and its potential impact must be included in this request. Whether to reopen a case is within the Director's sole discretion.

IV. MISCONDUCT RELATED TO THE OFFICE'S PROCEEDINGS

When the Office is engaged in proceedings related to an actual or suspected *Code* Violation, and even after a matter is final, the following behavior by a Covered Individual may be considered misconduct, which violates these *Procedures*, and may give rise to sanction: abuse of process, failure to report, intentionally making a false report, or Retaliation.

A. Abuse of process

Direct or indirect abuse of or interference with Office proceedings by: (a) falsifying, distorting or misrepresenting information; (b) destroying or concealing information prior to or during an investigation; (c) attempting to discourage an individual's proper participation in or use of, the Office's

processes; (d) harassing or intimidating (verbally or physically) any person involved in the Office's processes before, during and/or following proceedings (including up to and through arbitration); (e) publicly disclosing a Reporting Party's identifying information; (f) failing to comply with an interim measure or other sanction; or (g) influencing or attempting to influence another person to commit abuse of process.

B. Failure to report

A failure by a Covered Individual to report actual or suspected misconduct that could violate the *Code*.

C. Intentionally making a false report

A report that is intentionally false or made maliciously without regard for truth.

V. INTERIM MEASURES

At any point before a matter is final through these *Procedures* or arbitration, interim measures may be appropriate to ensure the safety or well-being of the Reporting Party, Athletes, other Non-athlete Participants or the Responding Party. Interim measures may also be appropriate where an allegation against the Responding Party is sufficiently serious that the Responding Party's continued participation could be detrimental to sport or its reputation. Nothing in these *Procedures* prevents the Office, LAO, NGB or USOC from taking appropriate interim measures upon notice of an imminent threat of harm. In such emergency circumstances, it may be appropriate to immediately remove a Covered Individual to address such a threat.

A. Rules

Any interim measures hearing will be conducted according to the *Rules*.

B. Scope

The interim measures hearing is not to be a full hearing on the merits and is limited to determining whether there exists reasonable cause to impose one or more interim measure(s).

C. Measures

Interim measures may include, but are not limited to, altering training schedules, providing chaperones, implementing contact limitations between the parties, and suspensions.

VI. SANCTIONING GUIDELINES

Sanctions will be reasonable and proportionate to the *Code* Violation and surrounding circumstances with the intended effect of protecting relevant participants.

A. Possible sanctions

One or more of the following sanctions may be recommended or imposed singularly or in combination: (a) written warning; (b) educational or behavioral programs; (c) loss of privileges; (d) probation; (e) suspension or other eligibility restrictions, up to and including permanent ineligibility. The Office reserves the right to lessen or broaden any range of recommended sanctions in the case of mitigating circumstances or egregiously offensive behavior.

The Office may maintain a searchable database of Covered Individuals who have had their eligibility restricted or suspended under these *Procedures* on or after March 3, 2017.

B. Considerations

Factors relevant to determining appropriate sanctions include, without limitation:

1. Seriousness of the Violation;
2. The Responding Party's prior history;
3. Ages of individuals involved;

4. Whether the Responding Party poses an ongoing threat to the safety of others;
5. Voluntary disclosure of offense and/or cooperation by the Responding Party;
6. Disposition of an investigation by state or federal law authorities;
7. Real or perceived impact of incident on the Reporting Party, NGB(s) or USOC; and
8. Other mitigating and aggravating circumstances.

C. Reciprocity

A sanction as to one NGB's Covered Individual, resulting from the Office's exercise of its exclusive or discretionary authority, shall also be enforced by the USOC and all other NGBs and LAOs.

VII. RELATED PROCEEDINGS

A. Effect of criminal or civil proceedings

Because the standards for finding a violation of criminal law are different from the standards for finding a violation of the *Code*, the resolution of a criminal proceeding is not determinative of (but may be relevant to) whether a violation of the *Code* has occurred, regardless of the outcome of any criminal process. Conduct may constitute sexual misconduct under the *Code* even if the Responding Party is not charged, prosecuted or convicted for the behavior that constitutes a potential violation of the *Code*, is acquitted of a criminal charge, or legal authorities decline to prosecute.

The Office's resolution will not typically be altered or precluded on the grounds that (a) a civil case or criminal charges involving the same incident or conduct has been filed, or (b) that charges have been dismissed or reduced; or (c) a lawsuit has been settled or dismissed. However, the Office may:

1. Undertake a delay in its investigation or resolution process to avoid any conflict or interference with law enforcement proceedings; and/or
2. Comply with a law enforcement request for cooperation when criminal charges associated with the incident or conduct that invoked this process is being investigated.

B. Effect of criminal conviction

If the Responding Party is convicted of a crime or subject to a Criminal Disposition related to the underlying misconduct, the Office may either investigate or conclude that a violation of the *Code* occurred based on a conviction or Criminal Disposition. If a conclusion is reached that a violation of the *Code* occurred, the Office may issue a sanction.

VIII. USE OF MATERIALS

Materials created or produced by the Office and marked confidential as part of these *Procedures* and any arbitration under the *Rules* shall not be disclosed outside those proceedings, except as required by law.



**SUPPLEMENTARY *RULES* FOR U.S. OLYMPIC AND
PARALYMPIC SAFESPORT ARBITRATIONS**

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**SUPPLEMENTARY RULES FOR U.S. OLYMPIC AND
PARALYMPIC SAFESPORT ARBITRATIONS**

Effective as of March 21, 2018

*All capitalized terms not otherwise defined here shall be defined as set forth in the *SafeSport Code for the U.S. Olympic and Paralympic Movement*.

R-1. Application

These *Supplementary Rules for U.S. Olympic and Paralympic SafeSport Arbitrations (Rules)* shall apply to arbitrations arising out of the *SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement (Procedures)*. No other Arbitration Rules shall be applicable.

R-2. Scope

Arbitration shall resolve only whether a Responding Party violated the *SafeSport Code for the U.S. Olympic and Paralympic Movement (Code)* and/or the appropriate sanction (if any). Challenges to, or complaints about, any organizational practices or procedures shall not be addressed and the arbitrator shall be limited to evaluating whether a Covered Individual violated the *Code* and, if so, the appropriate sanction.

R-3. Arbitrator qualifications

The pool of arbitrators for SafeSport cases shall consist of individuals who are U.S. citizens and meet the SafeSport Arbitrator Qualifications (Exhibit 3), as determined by the arbitration body. Any reference to arbitrator shall also refer to an arbitration panel consisting of three arbitrators, if applicable. All arbitrators in the SafeSport arbitrator pool will receive specialized training.

R-4. Parties

When the Responding Party requests a hearing under the *Rules*, the parties to the arbitration will be the Office and the Responding Party.

When the Reporting Party requests a hearing under the *Rules*, the parties to the arbitration will be Reporting Party and the Responding Party. Any reference to the Office in these *Rules* shall refer to the Reporting Party. A reference to the parties, the Office, the Responding Party or the Reporting Party will include any parent or guardian of a Minor, unless otherwise stated herein.

R-5. Advisor

Any party may have a single advisor, at that party's own expense. The advisor may but need not be an attorney. The Responding Party's advisor (and only in a Reporting Party initiated proceeding, the Reporting Party's advisor), if any, may participate in the pre-hearing conference, confer with the advisee during the hearing, clarify procedural questions, present opening and closing arguments on behalf of the advisee, suggest questions to the advisee and the hearing panel during witness examinations, or to the extent direct examination by the parties is permitted, question witnesses on behalf of the advisee. A party intending to have an advisor shall notify the other party and the arbitration body of the name and address of the advisor a minimum of 24 hours before the date set for the hearing or other proceeding at which the advisor is first to appear. The parties are responsible for keeping the arbitration body informed of any changes in advisors. Notice given to a designated advisor shall be deemed notice to the advisee.

R-6. Confidentiality

The arbitration, including all pre-hearing matters, shall be subject to the confidentiality provisions set forth in the *Procedures* and other confidentiality policies adopted by the U.S. Center for SafeSport Response and Resolution Office (Office).

R-7. Initiating arbitration

After receiving a request for an arbitration hearing and the required fees from the appropriate party under R-35, the Office will send a notice to the Responding Party, the Reporting Party and the arbitration administrator informing them that an arbitration has been initiated and

requesting confirmation of an email address to which notice will be deemed received upon mailing to such address.

The notice shall set forth (i) the alleged Violation; (ii) the sanction determined by the Office; (iii) the recipient's confidentiality obligations; and (iv) that any recipient who violates confidentiality obligations shall be subject to the jurisdiction of the Office and may be held, after proper process, to have violated the *Code*.

R-8. Number of arbitrators

There shall be one arbitrator.

R-9. Arbitrator appointment

a. Merits arbitrator

- (1) Promptly after arbitration is initiated, the arbitration body will send simultaneously to each party an identical list of nine arbitrators, all of whom shall be attorneys or retired judges. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the arbitration body of their agreement.
- (2) Within 48 hours after receiving the arbitrator list, the Office and the Responding Party each may strike the names of up to three arbitrators from the list and return the list to the arbitration body. If a party does not return a strike list within the time specified, all persons named in the list shall be deemed acceptable to that party. The names stricken by a party will not be disclosed to the other party.
- (3) From among the persons who have been approved on both lists the arbitration body shall invite an arbitrator to serve. If, for any reason, an arbitrator cannot be appointed from the submitted lists, the arbitration body shall have the power to make the appointment from among the other attorneys or retired judges of the pool, not to include any arbitrator previously stricken by a party.

b. Interim measures hearings

If an interim measures hearing is requested by the Office under R-40, it shall be heard by a single arbitrator, who is an attorney or retired judge, appointed by the arbitration body. The interim measures hearing arbitrator cannot manage the subsequent proceedings or serve as an arbitrator in a subsequent arbitration hearing of the matter.

R-10. Notice to arbitrator of appointment

Notice of the appointment of the arbitrator, whether appointed by the parties or by the arbitration body, shall be sent to the arbitrator by the arbitration body, together with a copy of these *Rules*. A signed acceptance by the arbitrator shall be filed with the arbitration body.

R-11. Jurisdiction and conflicts of interest

a. Jurisdiction

The arbitrator shall have the power to rule on the arbitration body's jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement. Any challenges to the arbitrator's jurisdiction must be made at the pre-hearing conference and shall be decided before the hearing, as set forth in R-15.

b. Conflicts of interest

- (1) Any person appointed as an arbitrator shall disclose to the arbitration body any circumstance that could affect impartiality or independence, including any bias, any financial or personal interest in the result of the arbitration, or any past or present relationship with the parties or witnesses.
- (2) The arbitration body shall communicate any information concerning a potential conflict of interest to the relevant parties and, as appropriate, to the arbitrator.
- (3) A party may file an objection with the arbitration body contesting an arbitrator's continued service due to a

conflict of interest. Upon receiving an objection, the arbitration body shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive. The parties may agree in writing that an appointed arbitrator subject to disqualification will not be disqualified.

c. Replacing a conflicted arbitrator

If the arbitration body determines that a selected arbitrator has a conflict of interest with one of the parties and the parties do not agree to waive the conflict, then the arbitration body shall select a substitute arbitrator from the remaining attorneys or retired judges named on the arbitrator pool list. If the appointment cannot be made from the list, the arbitration body shall have the power to make the appointment from among other attorneys or retired judges in the arbitrator pool without the submission of additional lists, not to include any arbitrator previously stricken by a party.

R-12. Vacancies

If an arbitrator is no longer able to hear a case for which the arbitrator has been appointed, the arbitration body shall select a substitute arbitrator from the remaining attorneys or retired judges. If the appointment cannot be made from the list, the arbitration body shall have the power to make the appointment from among the other attorneys or retired judges of the full arbitrator pool without the submission of additional lists, not to include any arbitrator previously stricken by a party.

R-13. Submissions to, and communication with, arbitrator

Except as provided under R-27.d., no party shall communicate unilaterally concerning the arbitration with an arbitrator or a candidate for an arbitrator position. Any documents submitted by any party to the arbitration body or to the arbitrator (with the exception of arbitrator strike lists under R-9) shall simultaneously be provided to the other party or parties to the arbitration.

R-14. Hearing concerning sanctions

If a Responding Party requests a hearing concerning only the Office's sanctions, the following *Rules* apply:

a. Scope

The Violation and the underlying facts will be deemed established. The arbitrator will determine whether the sanctions imposed fall outside the range of sanctions set forth in the *Procedures* and/or are otherwise inconsistent with the cumulative conduct history of the Responding Party.

b. Standard of review

The arbitrator is authorized to modify the sanction only upon finding that the Office abused its discretion.

c. Briefing

Within 10 business days of the arbitrator's appointment, the Responding Party shall file a brief setting forth the basis for the challenge to the sanction. Within seven business days of the Responding Party's filing, the Office shall file a responsive brief.

d. Oral argument

The decision shall be based on the parties' briefs and the Director's Decision. However, the arbitrator may in the arbitrator's discretion allow for oral argument.

e. Decision

The arbitrator will render a final and binding written decision to all parties within five business days from briefing.

R-15. Pre-hearing conference

- a.** The arbitrator shall schedule as soon as practicable a preliminary pre-hearing conference with the parties by telephone or video teleconference, but no sooner than four

business days and no later than 10 business days after the arbitrator is appointed.

- b. At least two business days before the pre-hearing conference, the Responding Party shall provide the Office and arbitration body with a written answer to the Office's decision against him/her (to include a written statement containing Responding Party's summary of the factual rebuttal to the Violation and the defenses the Responding Party intends to raise at the arbitration) and the documentary evidence and witnesses that the Responding Party intends to present at the hearing. If the Responding Party fails to submit the required information, the arbitrator has the discretion to deny its admittance at the arbitration.
- c. The pre-hearing conference will be directed by the arbitrator and shall be the exclusive opportunity of the parties to address issues that need to be resolved before the hearing, including, but not limited to:
 - (1) the timeline for the exchange of evidence and witness lists;
 - (2) any expected evidentiary issues;
 - (3) any challenges to jurisdiction;
 - (4) any disputes over the disclosure or exchange of evidence; and
 - (5) the scheduling and logistics of the hearing, to include without limitation the amount of time each side will have to present its evidence. The arbitrator will attempt to schedule the hearing to be completed within a single, eight-hour day.

The arbitrator may schedule more than one pre-hearing conference only if the arbitrator determines that an additional conference is necessary. All pre-hearing issues shall be resolved at the pre-hearing conference unless the arbitrator orders briefing. If briefing is ordered, all briefs must be

submitted at least five business days before the hearing, and the issues that are the subject of the briefing shall be, whenever possible, decided before the hearing.

The arbitrator shall issue a written decision memorializing decisions made and agreements reached during or following the pre-hearing conference. All identifying information of the Reporting Party (including name), the Responding Party and witnesses shall be redacted.

R-16. Discovery

There shall be no discovery, except in exceptional circumstances as ordered by the arbitrator.

R-17. Date and time of hearing

The arbitrator shall use best efforts to ensure that the hearing is completed and the decision rendered within 15 business days of the pre-hearing conference. Although the arbitrator shall make reasonable accommodations to the parties and their advisors with regard to scheduling, the parties and their advisors have a duty to be reasonably available to ensure the ability of the arbitration process to render a reasonably prompt result. The arbitrator in the arbitrator's sole discretion may rule that the unavailability of a party's advisor is not grounds for postponing the hearing. Failure by the arbitrator or the Office to adhere to the timelines set forth herein shall not be grounds for overturning the arbitrator's decision. On good cause shown by any party, the arbitration hearing process shall be expedited as may be necessary in relation to the Responding Party's potential participation in a competition as required by the Ted Stevens Olympic and Amateur Sports Act.

R-18. Place of hearing

The hearing will be conducted telephonically or by videoconference except as authorized by the arbitrator in unique circumstances, in which case the hearing may be held in person at a location in the United States determined by the arbitrator. If a hearing is held in

person, the arbitrator may nonetheless permit witnesses to appear behind screens, by telephone or via videoconference.

R-19. Attendance

Unless the arbitrator and the parties agree otherwise, only the following individuals shall be present at the hearing: (1) the Office; (2) the Responding Party; (3) the Reporting Party; (4) the parties' respective advisors; and (5) witnesses during their own testimony.

R-20. Oaths

Before proceeding with the hearing, each arbitrator will take an oath of office if required by law. The arbitrator will require witnesses to testify under oath if it is required by law.

R-21. Interpreters

All arbitration proceedings shall be conducted in English. Any party who would like an interpreter is responsible for coordinating directly with the interpreter and is responsible for the costs of the interpreter service. The interpreter must be free of conflicts of interest.

R-22. Continuance

The arbitrator may continue any hearing upon agreement of the parties, upon request of a party or upon the arbitrator's own initiative. Unless agreed, postponements shall be discouraged and only granted in compelling circumstances. A party or parties causing a postponement of a hearing will be charged a postponement fee, as set forth in the arbitration fee schedule (Exhibit 1).

R-23. Arbitration in the absence of a party or advisor

The arbitration may proceed in the absence of any party or advisor who, after notice, fails to be present or to obtain a postponement. The arbitrator shall require the party who is present to submit evidence that the arbitrator may require for the making of a decision.

R-24. Standard of proof

The arbitration body shall use a preponderance of the evidence standard to determine if a Covered Individual has violated the *Code*.

R-25. Rules of evidence

- a. Strict conformity to legal *Rules* of evidence shall not be necessary, and hearsay evidence may be considered.
- b. Any party may introduce the Director's Decision into evidence, and the arbitrator shall give it appropriate weight.
- c. The arbitrator shall determine the admissibility, relevance and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative, irrelevant or unreliable.
- d. The arbitrator may draw an adverse inference by failure of the Responding Party to cooperate, participate or testify during the Office's investigation or the arbitration.
- e. The arbitrator shall take into account applicable principles of legal privilege, including without limitation those involving the confidentiality of communications between an attorney and client and between a physician and patient.
- f. Any statement from a Minor, be it written, recorded or live, and whether direct or hearsay, shall be admissible.

R-26. Evidence by affidavit

The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit and shall give it such weight as the arbitrator deems appropriate after considering any objection made to its admission.

R-27. Hearing

Unless the parties agree that the arbitrator can determine the case without an oral hearing and on written briefings alone (which the parties may do whether the matter relates to liability and sanctions or sanctions only), the arbitrator will hold an oral hearing.

a. Arbitrator to manage proceedings expeditiously

The arbitrator, exercising discretion, shall conduct the proceedings expeditiously and may direct the order of proof,

bifurcate the hearing between the Violation and sanction portions of the hearing, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

b. Opening statements

Each party shall be entitled to present a concise opening statement prior to the presentation of evidence. The Office or its advisor shall present its opening statement first, followed by the Responding Party.

c. Presenting evidence

Both the Office and the Responding Party shall be entitled to an equitable amount of time to present evidence in support of or in opposition to the alleged Violations, as determined by the arbitrator at the pre-hearing conference. Absent exceptional circumstances, the parties will be expected to complete the hearing in a single, eight-hour business day. The arbitrator will track the time used by each party during the course of proceedings and enforce the time limits to ensure equitable time to both parties. The parties will be permitted, subject to any pre-hearing orders, to present documentary evidence through the submission of exhibits and to present testimony through affidavit or in-person testimony of witnesses.

The Office will present its evidence first. The Responding Party will present its evidence second. The Office will then present any rebuttal evidence.

d. Examining witnesses

(1) The Responding Party and Reporting Party shall be subject to questioning by only the arbitrator unless the Responding Party or Reporting Party agrees to direct examination and cross-examination by the opposing party.

(2) Unless the Responding Party and/or Reporting Party elect to be questioned directly by the parties, no later than five days before the hearing, the Office and the Responding Party each may submit, *ex parte*, proposed questions and lines of inquiry to the arbitrator for the questioning of the Responding Party and Reporting Party. The arbitrator will review the submitted questions and lines of inquiry and will, in the arbitrator's discretion, determine which are appropriate and relevant based on the understanding of the matter and to ensure the arbitrator's ability to render a decision in the matter. The arbitrator also may ask such other questions which the arbitrator deems appropriate.

(3) If the arbitrator has been the sole questioner of the Responding Party or Reporting Party, then after the arbitrator's direct questioning of the Responding Party or Reporting Party is completed, the witness will be temporarily excluded from the hearing so that the arbitrator can discuss with each of the parties separately appropriate follow-up questions or supplemental lines of inquiry for the arbitrator to consider. The arbitrator will ask follow-up questions of the witness that the arbitrator deems appropriate.

(4) The arbitrator shall also question any witness. The parties may also question all other witnesses directly, provided that the arbitrator shall have the authority to limit questioning of witnesses or lines of inquiry based on, without limitation, relevance, that the questioning is cumulative, or that the questioning has become harassing or abusive.

(5) Examining Minors

The presumption is that a Minor will not testify live at a hearing; however, with the permission of the Minor's parents or guardians (or in extraordinary circumstances, without such permission), the Minor may testify if so desired. The arbitrator shall determine the manner in

which Minor's evidence shall be given, including whether any or all questioning of the Minor (live or via video) will be completed outside the presence of their parent(s) or guardian(s), bearing in mind (a) the objective of achieving a fair hearing, (b) the possible damage to a Minor's welfare from giving evidence, and (c) the possible advantages that the Minor's evidence will bring to determining the facts.

A Minor may only be asked to testify in exceptional circumstances as determined by the arbitrator. In making this decision, the arbitrator shall consider:

- (a) the Minor's wishes and feelings, in particular, the Minor's willingness to give evidence (an unwilling Minor should rarely, if ever, be obligated to give evidence);
- (b) the Minor's particular needs and abilities;
- (c) whether the case depends on the Minor's allegations alone;
- (d) corroborative evidence;
- (e) the age of the Minor;
- (f) the maturity, vulnerability, understanding, capacity and competence of the Minor;
- (g) whether justice can be done without further questioning of the Minor;
- (h) the wishes and views of any parent, person with parental responsibility for the Minor, or any guardian, if appropriate; and
- (i) whether the Minor has given evidence to another tribunal or court related to the subject matter of the proceeding, the way in which such evidence was given, and the availability of that evidence.

e. Role of the Reporting Party

In arbitrations requested by the Responding Party, the Reporting Party is not a party, but has the right to be present during the hearing and to give testimony as a witness if called, but shall not otherwise participate in the hearing.

f. Closing statements

Each party will be entitled to present a concise closing statement after the close of evidence and before the hearing is concluded. The Office will present its closing statement first, followed by the Responding Party, and the Office will be allowed time for a reply.

g. Hearing closed to the public

The hearing shall be closed to the public.

h. No disclosure of information

All information obtained by the Office, Responding Party or the Reporting Party during the arbitration shall be subject to the stated limits set forth in the Office's *Procedures*.

i. Recording

At the request of any party or the arbitrator, hearings shall be recorded by the arbitration body and retained by the Office in its confidential files, but shall not be made available to any party or third party except in accordance with the *Procedures*. The requesting party is responsible for arranging the recording.

R-28. Closing of hearing

After all evidence has been submitted at the hearing, the arbitrator shall specifically inquire of each party whether it has any further evidence to offer or witnesses to be heard. Unless the arbitrator determines that additional evidence or witness(es) are required to resolve the controversy, the arbitrator will declare the hearing closed. There shall be no post-hearing briefing ordered except in exceptional

circumstances. If documents or responses are to be filed as directed by the arbitrator, or if briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs.

R-29. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these *Rules* has not been complied with and who fails to promptly state an objection in writing shall be deemed to have waived the right to object.

R-30. Extensions of time

For good cause shown, the arbitrator may extend any period of time established by these *Rules*, except the time for making the decision, keeping in mind the need to resolve these disputes expeditiously; the unavailability of an advisor—after an arbitrator’s efforts to reasonably accommodate the advisor’s schedule—shall not be considered good cause except in exceptional circumstances. The arbitrator shall notify the parties of any extension.

R-31. Notice and receipt

The parties each must provide an email address to the arbitration body and opposing parties/advisors upon initiation of an arbitration under the *Rules*. Notice sent to that email address shall be considered actual notice to the party effective upon delivery.

R-32. Decisions

a. Time

The reasoned decision shall be made promptly by the arbitrator after the close of evidence, and, unless otherwise agreed by the parties or specified by law, no later than seven business days from the date of close of the evidence or any briefing ordered by the arbitrator.

b. Form

In all cases, the arbitrator shall render a written, reasoned final decision, which shall be signed by the arbitrator. All

identifying information of the Reporting Party (including name), and witnesses (other than the Responding Party) shall be redacted. If the arbitrator determines that there has been no Violation, then the Responding Party may request that the arbitrator redact their name and/or identifying information in the final decision.

c. Scope

The arbitrator may grant such remedy or relief the arbitrator deems just and equitable and within the scope of the *Code* and the Sanctioning Guidelines.

d. Delivery to parties

The final decision shall be deemed delivered to the parties if transmitted as provided in R-31.

R-33. Modifying decision

Within three business days after the transmittal of the arbitrator’s final decision, any party, upon notice to the other parties, may request the arbitrator, through the arbitration body, to correct any clerical, typographical or computational errors in the decision. The arbitrator is not empowered to re-determine the merits of any matter already decided. The other parties shall be given two business days to respond to the request. The arbitrator shall dispose of the request within two business days after transmittal by the arbitration body to the arbitrator of the request and any response thereto.

R-34. Appeal

The arbitration decision shall be considered final and binding. The parties to arbitration waive, to the fullest extent permissible by law, any right to challenge in court the arbitrator’s decision.

R-35. Filing fees and expenses

- a. The arbitration body shall prescribe filing and other administrative fees and expenses to compensate it for the cost of providing services. The fees in effect when the fee or charge is incurred shall be applicable.

b. Initiating arbitration

1. Arbitration requested by Responding Party

a) Arbitration fees and expenses

The Responding Party shall pay a full deposit for all fees and expenses associated with the arbitration as set forth in Exhibit 1. If the Responding Party fails to provide the deposit, then the arbitration may not proceed.

b) Hardship exemption

In the case of Responding Parties who are Athletes, the Responding Party may, at the discretion of the Office, obtain a hardship exemption from payment of some of these fees through written certification that they have insufficient funds to cover arbitration (*see* Exhibit 2) If the Office grants an exemption, the Office shall pay all fees and expenses associated with the arbitration as set forth in Exhibit 1.

2. Arbitration requested by Reporting Party

a) Arbitration fees and expenses

The Reporting Party shall pay a full deposit for all fees and expenses associated with the arbitration as set forth in Exhibit 1. If the Reporting Party fails to provide the deposit, then the arbitration may not proceed.

b) Hardship exemption

In the case of Reporting Parties who are Athletes, the Reporting Party may, at the discretion of the Office, obtain a hardship exemption from payment of some of these fees through written certification that they have insufficient funds to cover arbitration (*see* Exhibit 2). If the Office grants an exemption, the

Office shall pay all fees and expenses associated with the arbitration as set forth in Exhibit 1.

R-36. Other fees and expenses

The expenses of witnesses and translators for any party shall be paid by the party producing such witnesses or translators. Parties shall be responsible for their own advisor's fees and costs, and all other expenses not expressly assumed by the Office. A party who successfully seeks a continuance shall pay a continuance fee as set forth in Exhibit 1.

R-37. Arbitrator's compensation

- a.** Arbitrators shall be compensated at the rates set forth in the arbitration fee schedule (Exhibit 1).
- b.** If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator and the arbitration body, and confirmed to the parties. Any arrangement for the compensation of an arbitrator shall be made through the arbitration body and not directly between the parties and the arbitrator.

R-38. Allocating fees and expenses

The arbitrator shall, in the final reasoned decision, allocate fees and expenses as follows:

- a.** Arbitrations requested by the Responding Party
 - 1. If a Violation is not found, the Office shall reimburse the Responding Party for all arbitration fees and expenses paid to the arbitration body pursuant to R-35.
 - 2. If the case involves multiple Violations, and the arbitrator modifies some Violations but not all, the arbitrator has the discretion to allocate the fees and expenses paid to the arbitration body pursuant to R-35.
 - 3. If, in a sanctions-only hearing, the sanction is reduced the arbitrator may reapportion responsibility for all

arbitration fees and expenses paid to the arbitration body pursuant to R-35 between the Office and the Responding Party.

b. Arbitrations requested by the Reporting Party

If a Violation is found, the Office shall reimburse the Reporting Party for all arbitration fees and expenses paid to the arbitration body pursuant to R-35.

R-39. Interpreting and applying the *Rules*

The arbitrator shall interpret and apply these *Rules* insofar as they relate to the arbitrator's powers and duties.

R-40. Interim measures

If the Office seeks interim measures, it will offer an opportunity for a hearing. The following *Rules* govern interim measures hearings.

a. Notice to the Responding Party

The Responding Party will be notified as soon as possible of (a) the interim measure and (b) the opportunity for a hearing to take place no later than 72 hours after the Responding Party requests a hearing (unless otherwise agreed by the parties). The Interim Measure is effective upon issuance of the Notice subject to stay procedures set forth in the Practices and Procedures.

b. Arbitrator

If the Office imposes or seeks to impose interim measures prior to the appointment of the arbitrator as provided in R-9, then a special arbitrator will be appointed by the arbitration body solely to conduct the interim measures hearing. This special arbitrator shall not be considered for appointment pursuant to R-9. If the Office imposes or seeks to impose interim measures after the appointment of the arbitrator, then the appointed arbitrator shall conduct the interim measures hearing.

c. Filing fees and expenses

The arbitration body shall prescribe filing and other administrative fees and expenses to compensate it for the cost of providing services. The fees in effect when the fee or charge is incurred shall be applicable. The Office shall pay a deposit for 2/3's of the fees and expenses and the requesting party shall pay 1/3 of the fees and expenses associated with an interim measures arbitration as set forth in Exhibit 1.

d. Procedures

(1) Expedited proceedings

The interim measures hearing is an expedited proceeding to quickly resolve whether sufficient evidence exists to satisfy the arbitrator that the interim relief requested is appropriate on the facts and circumstances of the case. The interim measures hearing is not intended to be the hearing necessary to finally resolve whether the Responding Party has committed a Violation or what the appropriate sanctions should be, if a Violation is found to have occurred. Except in exceptional circumstances, the interim measures hearing will last no longer than two hours.

(2) Scope

The interim measures hearing will not be a hearing on the merits and is limited to determining if there is cause to impose the interim measure(s).

e. Standard of review

To impose interim measures, the arbitrator must find based on the evidence presented, that: (i) the interim measure is appropriate based on the allegations and facts and circumstances of the case as they appear to the arbitrator; (ii) the interim measure is appropriate to maintain the safety or well-being of the Reporting Party, Athletes, or other Non-athlete Participants; or (iii) the allegations against the

Responding Party are sufficiently serious that the Responding Party's continued participation in the sport could be detrimental to the reputation of sport. In all cases, there shall be a rebuttable presumption that the allegations, as presented, are true.

f. Decision

The arbitrator may approve, reject, or modify the interim measures imposed or proposed by the Office. The arbitrator shall issue a decision regarding the Office's request for interim measures either orally at the conclusion of the interim measures hearing, with a written reasoned order to follow, or by a written reasoned decision issued within 24 hours of the close of the interim measures hearing. The decision shall be given no weight in the hearing of the case.

g. No appeal

Neither the Office nor the Responding Party may appeal the arbitrator's decision. The denial of the requested relief shall not, however, prejudice the Office's right to seek interim measures in the same case in the future.

h. Final hearing expedited if interim measures imposed

If interim measures are imposed, then the time for the hearing will be expedited to the extent feasible.

Exhibit 1

JAMS ARBITRATION FEES

The arbitration body for U.S. Olympic and Paralympic SafeSport Arbitrations is JAMS, www.jamsadr.com. Applicable arbitration fees are as stated, effective March 3, 2018.

\$5,200.00 Single arbitrator

\$1,500.00 Single arbitrator, interim measures hearing

- A deposit for the full price of JAMS fees and neutral rates is due at the time an arbitration is requested. An amount of \$1,600 for single arbitrator matters is non-refundable. An amount of \$1,500 for single arbitrator, interim measures hearings, is non-refundable.
- Applicable arbitrator travel costs will be charged.
- The above fees exclude usage of facilities. If a JAMS facility is used, a room rental fee not to exceed \$300/day will be charged.

CANCELLATION/CONTINUANCE POLICY

<i>Cancellation/Continuance period</i>	<i>Fee</i>
14 days or more prior to hearing	<ul style="list-style-type: none"> • Arbitration, single arbitrator, \$3,600 is refundable • Interim Measures Hearing, non-refundable

- Hearing fees are non-refundable if time scheduled (or a portion thereof) is cancelled or continued after the cancellation date. The cancellation policy exists because time reserved and later cancelled generally cannot be replaced. In all cases involving non-refundable time, the party requesting the hearing is responsible for the fees of all parties.
- JAMS reserves the right to cancel the hearing if fees are not paid as required by the applicable cancellation date and JAMS confirms the cancellation in writing.

Exhibit 2

HARDSHIP CERTIFICATION

I, _____, certify under penalty of perjury that I qualify for a Hardship Exemption under the Supplementary *Rules* for U.S. Olympic and Paralympic SafeSport Arbitrations because I:

_____ am an Athlete, as defined in the SafeSport Policies and Procedures for the U.S. Olympic Movement, **and**

_____ do not have sufficient funds to cover the costs of arbitration as of this date.

Name (printed)

Signature

NOTARIZATION

State of _____)

SS: County of _____)

On this, the ____ day of _____, 20____, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that the same was executed for the purposes therein contained. In witness hereof, I hereunto set my hand and official seal.

Notary Public

Exhibit 3
SafeSport Arbitrator Qualifications

INDEPENDENCE

Each arbitrator shall be independent. An arbitrator is “independent” if (a) the individual has or had no material affiliation or relationship, directly or indirectly, with the United States Center for SafeSport, the United States Olympic Committee (USOC), any National Governing Body (NGB), any Paralympic Sports Organization (PSO), the Athletes Advisory Council of the USOC (AAC), and/or any other affiliated organization such as an Olympic Training Center or designated partner, and (b) such person is free of any direct or indirect relationships that create an actual or perceived conflict of interest that could reasonably be expected to interfere with the exercise of independent judgment of such person. Before an arbitrator may be selected for the JAMS SafeSport Panel, the individual shall disclose any potential conflicts of interests to JAMS.

KNOWLEDGE

In addition to independence, arbitrators shall have a demonstrated working knowledge of sexual assault, domestic violence, child sexual abuse, grooming, trust dynamics, and trauma-informed questioning/forensic interviewing protocol. Experience involving emotional, physical and sexual misconduct in sport is strongly preferred.

WORKING EXPERIENCE

Arbitrators shall have experience working in at least one of the following areas:

- In criminal law as a judge, district attorney, or defense attorney, with specific experience in sexual misconduct
- Law enforcement, with specific experience in sexual misconduct
- As a social worker
- A Title IX coordinator or investigator
- As a guardian *ad litem* and/or
- Other comparable working experience.

From: Michael Henry
Sent: Friday, August 3, 2018 5:38 PM
To: 'Gweissfisch' <gweissfisch@protonmail.com>; 'Howard Jacobs' <howard.jacobs@athleteslawyer.com>
Subject: Notice re: Jean Lopez - Stay of the Sanctions & Interim Measures - U.S. Center for SafeSport

Jean Lopez,
c/o Mr. Weissfisch & Mr. Jacobs,

This email serves as formal notice that, in the matter of Jean Lopez, effective immediately, the Center is staying the sanction of permanent ineligibility until such time, if any, as the Reporting Parties agree to participate in the Center's process. In the interim, the Center is imposing the following interim measures:

- *No Contact Directive.* Jean Lopez is prohibited from communicating in any way with Reporting Parties Mandy Meloon, Kay Poe, and/or Heidi Gilbert; communication includes, but is not limited to: contact by phone, through email or text message, via any social media application or other electronic medium, in-person interactions (verbal and non-verbal), or contact facilitated through a third party. Should Jean Lopez and Mandy Meloon, Kay Poe, and/or Heidi Gilbert happen to be in the same place at the same time, in addition to refraining from any form of communication, you should make reasonable efforts to keep your distance and avoid getting too close to them. Please feel free to contact the Center if you have any questions about this Directive.

Failure to comply with these interim measures will constitute an independent violation of the SafeSport Code. As an additional reminder regarding applicable SafeSport policies:

- **Anti-Retaliation Policy**
It is a serious violation of the SafeSport Code to retaliate against any person who is participating in the Center's processes, including an individual who reports an allegation, is supporting participating parties, or who provides information relevant to an allegation (i.e., a witness). Please refrain from engaging in any behavior—or prompting/permitting such behavior by an individual allied with you—that might constitute retaliation and, should you experience retaliation during this process, please report it to the Center.
- **Abuse of Process**
It is also a serious violation of the SafeSport Code to engage in behaviors that directly or indirectly interfere with the Center's proceedings. This includes, but is not limited to: falsifying, distorting, or destroying information/evidence, making false or misleading statements, disclosing the identity of a Reporting Party, or attempting to influence another person to commit abuse of process.

Please don't hesitate to reach out if you have any questions or concerns.



Michael Henry

Director, Investigations & Outcomes

Office: 720-531-1731

Fax: 720-340-7282

www.safesport.org

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From: Stephen Estey
To: [Joe Zonies](#)
Subject: RE: Any update
Date: Friday, July 27, 2018 11:01:38 AM

I think the middle ground would be to wait a few months for our client's depositions (and the Lopez depositions) to be taken in the civil case. All of this testimony will be under oath and you can use this in the Safe Sport proceeding (although Lopez would be nuts not to take the 5th).

Does this work for you?

Stephen Estey
Board Certified Trial Attorney
ESTEY & BOMBERGER, LLP
2869 India Street
San Diego, CA 92103
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From: Joe Zonies [mailto:jzonies@zonieslaw.com]
Sent: Wednesday, July 25, 2018 11:48 AM
To: Stephen Estey <steve@estey-bomberger.com>
Subject: RE: Any update

Stephen,

The Center understands that your clients do not want to present live testimony (whether in person, by video, phone or through questioning by the arbitrators) at the upcoming merits arbitration. While we respect their decisions, the Center must independently make a determination as to whether it can proceed to arbitration based solely on declarations.

As we have discussed, this matter will be presented to a three-judge panel of arbitrators and, importantly, their decision will be final and binding. It is evident that this matter will largely turn on credibility determinations. If the Panel is limited to reviewing declarations, they will not be able to fully assess how credible your clients truly are. In addition, the Responding Party will surely argue that he cannot properly confront the testimony of the Reporting Parties and test their credibility. As such, the Center has grave concerns that it will not be able to fully and accurately present the case

given these limitations.

The Center's goal is to provide a safe environment for all participants, to protect sport, and to investigate and subsequently present matters as thoroughly, reliably, and fairly as possible. Absent live testimony from your clients, whether in person, by video, phone or through questioning by the arbitrators, the Center does not believe it can do so.

Accordingly, please inform your clients that the Center intends to request a continuance of the hearing until such time as your clients agree to participate. Unfortunately, as the Center cannot leave its permanent ineligibility decision in place in perpetuity without fully cooperating reporting parties, this also means that the Center will have to rescind its permanent ineligibility finding. Please note, the Center likely will put some interim measures in place to protect your clients – but this also likely will lead to a hearing on the interim measures.

Please let me know if you have any questions or concerns.

Thank you,

Joe

JOSEPH ZONIES

ZONIES LAW LLC | WWW.ZONIESLAW.COM

1700 LINCOLN STREET

SUITE 2400

DENVER, COLORADO 80203

MAIN: 720.464.5300 | FAX: 720.961-9252

JZONIES@ZONIESLAW.COM

From: Stephen Estey <steve@estey-bomberger.com>

Sent: Monday, July 23, 2018 4:55 PM

To: Joe Zonies <jzonies@zonieslaw.com>

Subject: RE: Any update

Declarations. R u going to send proposed decs?

Stephen Estey

Board Certified Trial Attorney

ESTEY & BOMBERGER, LLP

2869 India Street

San Diego, CA 92103

office: (619) 295.0035 | fax: (619) 295.0172
steve@estey-bomberger.com | www.ebtrialattorneys.com



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From: Joe Zonies [<mailto:jzonies@zonieslaw.com>]
Sent: Monday, July 23, 2018 3:17 PM
To: Stephen Estey <steve@estey-bomberger.com>
Subject: Any update

I have to disclose witnesses and how (live, etc.) they are testifying next week.

Thanks,

Joe

JOSEPH ZONIES

ZONIES LAW LLC | WWW.ZONIESLAW.COM

1700 LINCOLN STREET

SUITE 2400

DENVER, COLORADO 80203

MAIN: 720.464.5300 | FAX: 720.961-9252

jzonies@zonieslaw.com

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